MANUAL OF THE QUALIFICATIONS & REGISTRATION OF VOTERS

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MANUAL OF THE QUALIFICATIONS AND REGISTRATION OF VOTERS

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MANUAL

OF THE

QUALIFICATIONS AND REGISTRATION OF VOTERS

IN

PARLIAMENTARY, MUNICIPAL, AND LOCAL GOVERNMENT ELECTIONS

BY

JAS. W. WHITELAW,
SOLICITOR,
SECRETARY OF DUMFRIESSHIRE UNIONIST ASSOCIATION

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PREFACE

THIS Manual had its origin in notes which I have from time to time taken for my own use, and in putting them into their present shape I have aimed at expressing general principles in the text of the sections, and at dealing with details in the footnotes.

The cross references in these footnotes are somewhat numerous, but this is unavoidable if there is not to be a constantly recurring repetition of points already dealt with.

It has not been thought necessary to print in an Appendix the Statutes referred to, as to do so would unduly increase the size of the book, and the text of the Statutes is, as a rule, available to those who wish to go thoroughly into the subject. A Digest of Cases is equally unnecessary, as there are existing Digests, but a list of Cases is inserted, with a reference to the page on which they are quoted.

In referring to the standard works on the Parliamentary Franchise by Mr. John Cay ("The Scottish Reform Act" of 1832) and Mr J. Badenach Nicholson ("Law of Election and Registration in Scotland," Second Edition, 1879), the short titles of "Cay" and "Nicholson" are adopted. I have

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not attempted so exhaustive a treatment of the whole subject as is contained in Mr. Nicholson's work, but have endeavoured to bring the points bearing upon "Qualification" and "Registration" down to date in such form as may be of use in the Registration Courts.

The Municipal and Local Government Franchises are also dealt with, although the abandonment of the Scotch Education Bill, while this Manual was passing through the Press, has slightly interfered with the original scheme.

J. W. W.

DUMFRIES, 15*th August* 1904.

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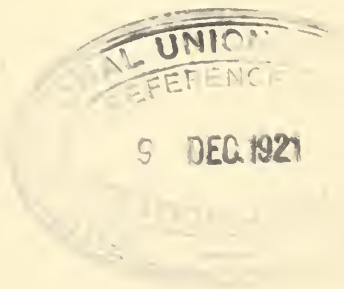
MANUAL OF THE QUALIFICATIONS AND REGISTRATION OF VOTERS



PARLIAMENTARY, MUNICIPAL, AND LOCAL GOVERNMENT FRANCHISES

INTRODUCTORY

1. Parliament in Scotland was originally founded on feudal lines, and consisted of the great churchmen, the lay nobles, and the lesser barons or freeholders who held direct from the king (*a*). The elective element was first introduced by the appointment of representatives from the Royal Burghs (*a*), and later on the smaller proprietors in counties appointed representatives to act on their behalf (*b*), as personal attendance in Parliament was found by them to be too burdensome. The larger proprietors still attended personally, and the whole body sat as one chamber down to the Union of the Parliaments, after which the Parliament of Great Britain sat (as it had previously done in England) in two chambers. In Royal Burghs the Town-Councils were in early times appointed by the burgesses, but this privilege was taken away in 1469 (*c*), after which Town-Councils became self-elective. In Burghs of Regality and Burghs of Barony the Council was appointed on the terms set forth in the charter of their constitution. Local affairs in counties were originally in charge of the king's Barons, who had large powers, both civil and criminal, and in the management of parochial affairs the Church was much in evidence. This territorial influence continued in counties down to recent times, for the Commissioners of Supply were a territorial body (*d*), while in parishes the territorial and ecclesiastical element bulked largely in the composition of the Parochial Board (*e*), and also (down to the passing of the Education Act of 1872 (*f*)) in the management of the parish schools.

(*a*) These persons were all represented at the important Parliament

held by King Robert the Bruce at Cambuskenneth on 15th July 1326.

(*b*) 1427, c. 2 ; 1585, c. 74 ; 1587, c. 120 ; 1641, c. 62 ; 1681, c. 87.

(*c*) 1469, c. 29.

(*d*) 17 and 18 Vict. c. 91 ; 19 and 20 Vict. c. 93 ; and 20 Vict. c. 11. The powers and duties of Commissioners of Supply are (with certain very minor exceptions) now vested in the County Council.—See section 4, *infra*.

(*e*) 8 and 9 Vict. c. 83. This Board is now superseded by the Parish Council (see section 4, *infra*), but previous to this its powers in respect of public health had been transferred to the County Council.

(*f*) Education Act (Scotland), 1872 (35 and 36 Vict. c. 62).

2. By the Reform Act of 1832 (*a*) the electorate for parliamentary purposes was put upon a representative basis, and owners and tenants of qualifying subjects of sufficient value were declared voters in the election of a Member of Parliament. The Reform Act of 1868 (*b*) extended the ownership franchise in counties, and the tenancy franchise in both counties and burghs, and it created in burghs a new household franchise and a lodger franchise. The Reform Act of 1884 (*c*) assimilated the franchises in counties and burghs by extending to counties the household franchise and lodger franchise, and it created in both counties and burghs a new service franchise, which is really a subdivision of the household franchise. Parliamentary voters are therefore now qualified both in counties and burghs either as owners, tenants, householders (including those qualified under the service franchise), or lodgers (*d*). The 1868 Reform Act also enacted that two members should be elected by the Scotch Universities, but it is not proposed to deal with these electorates.

(*a*) The Representation of the People (Scotland) Act, 1832 (2 and 3 Will. IV. c. 65). The short title, "Reform Act of 1832," will be adopted throughout this Manual.

(*b*) The Representation of the People (Scotland) Act, 1868 (31 and 32 Vict. c. 48). The short title, "Reform Act of 1868," will be adopted.

(*c*) The Representation of the People Act, 1884 (48 and 49 Vict. c. 3). The short title, "Reform Act of 1884," will be adopted.

(*d*) See Part First of Manual.

3. By an Act passed in 1833 (*a*), it was provided that Town-Councils in Royal Burghs should thereafter be elected by an electorate based upon the Parliamentary franchise, and Parliamentary Burghs (*i.e.*, burghs returning, or contributing to return, a Member to Parliament, although not Royal Burghs) were put upon the same footing by a subsequent Act passed

in the same year (*b*). It was not until the Police Act of 1892(*c*) that the electorate in burghs of regality and burghs of barony was placed upon the same representative footing, and this Act is also applicable to purely police burghs in which the electorate was previously constituted upon a representative, although not exactly upon a Parliamentary basis. The whole matter was ultimately dealt with in a uniform manner by the Town Councils (Scotland) Act, 1900(*d*), which applies to every kind of burgh, and which enacts that the governing body shall be a Town-Council designated by the corporate name of "The Provost (or Lord Provost), Magistrates, and Councillors," who shall be appointed by an electorate consisting of those persons entitled to the parliamentary franchise in respect of subjects within the burgh, with peers and women added (*e*).

(*a*) The Royal Burghs (Scotland) Act, 1833 (3 and 4 Will. IV. c. 76).
(*b*) The Parliamentary Burghs (Scotland) Act, 1833 (3 and 4 Will. IV. c. 77).
(*c*) The Burgh Police (Scotland) Act, 1892 (55 and 56 Vict. c. 55).
(*d*) 63 and 64 Vict. c. 49.
(*e*) See Part Second of Manual.

4. Advances in the direction of popular local government were made by the Education Act of 1872(*a*), the School Boards under which were chosen by an electorate which was upon a representative although not exactly a Parliamentary basis, and by the Roads and Bridges Act of 1878(*b*), certain members of the body of Trustees under this Act being elected by the ratepayers; but it was not until the Local Government Acts of 1889(*c*) and 1894(*d*) that local government in counties and parishes was placed on a thoroughly representative footing. By the Act of 1889 local affairs in counties were entrusted to the County Council (*e*), and by the Act of 1894 local affairs in parishes were entrusted to the Parish Council (*f*), both of which Councils are formed on the analogy of Town-Councils in burghs, and are appointed by a similar electorate consisting of those persons entitled to the Parliamentary franchise, with peers and women added (*g*).

(*a*) 35 and 36 Vict. c. 62.
(*b*) 41 and 42 Vict. c. 51.
(*c*) Local Government Act 1889 (52 and 53 Vict. c. 50).
(*d*) Local Government Act 1894 (57 and 58 Vict. c. 58).

(*e*) The powers and duties of the Commissioners of Supply (with certain very minor exceptions), of the Road Trustees, and of the Parochial Board in respect of public health are now vested in the County Council. Where (as is usually the case) a county is divided into County Council Districts, the District Committee consists of the members of County Council in the district, with parish and burgh representatives added, and this Committee is the administrative body for roads and public health.—Local Government Act, 1889, sections 11, 77, and 78.

(*f*) The powers and duties of the Parochial Board are now vested in the Parish Council, except in so far as the same were transferred to the County Council,—Local Government Act, 1894, section 22.

(*g*) See Part Second of Manual.

5. By the statutes creating or relating to these various franchises provision is made for the various electors being enrolled in the voters rolls applicable to each case, and Registration Courts are created for the revisal of these rolls and the protection of the rights of the electors (*a*).

(*a*) See Part Third of Manual.

PART FIRST

PARLIAMENTARY FRANCHISE

CHAPTER I

AS TO OWNERSHIP QUALIFICATION

I. PERSONS.

6. *In Counties.*—The persons entitled to be registered and to vote as owners are—(1) under the Reform Act of 1832 (*a*) the possessors of qualifying subjects (*b*) of the annual value (*c*) of £10; and (2) under the Reform Act of 1868 (*d*) the possessors of qualifying subjects (*b*) of the annual value (*c*) of £5. Under both Acts the parties must have possessed (*e*) the subjects continuously for the period of six months previous to the 31st July of the year in which they claim, and they must still be in possession at the date of the Registration Court (*f*) at which their claim falls to be considered; and the same rule applies to the previous endurance and continuance of the title (*g*) to and value (*c*) of the qualifying subjects. There is, however, an exception to this rule in the case of persons who have acquired the qualifying subjects by succession (whether testate or intestate), or marriage (including marriage settlement), (*h*), or by appointment to any place or office (*i*), "within the said period of six months" (*i.e.*, between 31st January and 31st July). Such persons, provided they continue in possession till the Registration Court, are entitled to be registered as owners (*j*), and this apparently though they and their authors' respective periods of possession added together would not extend back to 31st January of the year in which they claim (*k*). Persons so entitled to be enrolled must be free from any disqualification (*l*).

(*a*) 2 and 3 Will. IV. c. 65, section 7.

(*b*) See sections 11 and 12, *infra*.
(*c*) See section 13, *infra*.
(*d*) 31 and 32 Vict. c. 48, section 5.
(*e*) See section 16, *infra*.
(*f*) This is distinctly enacted in the Reform Act of 1868, section 5, under which the person qualified is one "who, when the Sheriff proceeds to consider his right, . . . *is*, and has been" for the necessary period, in possession of qualifying subjects, and although the Reform Act of 1832, section 7, is not so distinct, still the date "when the Sheriff proceeds to consider his (the voter's) claim for registration" is the vital one, and the claimant must remain fully qualified up to that date, and be then in right of the qualification appearing on the assessor's list,—*M'Kenzie* v. *Comrie*, 1891, 19 R. 292; 29 S.L.R. 143.
(*g*) See sections 14 and 15, *infra*.
(*h*) Legal liferenters.—See section 9 (II.), *infra*.
(*i*) Official liferenters.—See section 9 (III.), *infra*.
(*j*) Reform Act 1832, section 7. This provision is commonly called the "succession clause," and has always been held to apply to owners under the Act of 1868, but there is no direct decision upon the point. The correctness of that view is, however, pretty well assured by the fact of a similar proviso in section 9 of the Act 1832 having been held to apply to tenants under the new franchise,—*Stalker* v. *Young*, 1885, 13 R. 77, 23 S.L.R. 52. The proviso in question (section 7) will be strictly construed, and acquisition by succession or otherwise *after* 31st July, although prior to the Registration Court, will not be held to qualify,—*Millar* v. *Russell*, 1868, 7 M. 283.
(*k*) Nicholson, p. 70, and Cay, p. 152.
(*l*) See sections 30 and 31, *infra*, as to disqualifications.

7. *In Burghs.*—The persons entitled to be registered as owners are those possessed of qualifying subjects (*a*) of the annual value (*b*) of £10. In the case of "true owners" (*c*) it is sufficient if they acquire possession (*d*) at any time before the date of the Registration Court (*e*); but owners (other than "true owners") must have been in continuous possession for the period of twelve months (*e*) previous to the 31st July (*f*) of the year in which they claim, and they must still be in possession at the date of the Registration Court (*g*), and the same rule applies to the previous endurance and continuance of the title (*h*) to and value (*b*) of the qualifying subjects. True owners (*i*) do not need to be in occupation of the qualifying subjects, but actual occupation (*e*) is required in the case of the other class of owners; and *both* classes must reside (*j*) either in the burgh or within seven miles of it for six months previous to said 31st July, and it would seem that this residence should continue till the date of the Registration Court (*k*). The persons so entitled must be free from any disqualification (*l*).

(*a*) See sections 11 and 12, *infra*.

(*b*) See section 13, *infra*.

(*c*) Reform Act 1832 (2 and 3 Will. IV. c. 65), section 11, and *Davidson* v. *Johnstone*, 11th December 1903, 41 S.L.R. 171. A "true owner" is a proprietor having an absolute title to, and absolute power of disposal of the qualifying subjects, and it is sufficient to afford a qualification if he acquires these subjects at any time before the Sheriff considers his claim; but, *quære*, can a "true owner" establish his right by claim if he has not been in possession of the subjects on 31st July preceding. —See section 48, footnote (*e*).

(*d*) See section 16, *infra*.

(*e*) Reform Act 1832, section 11, and Reform Act 1884 (48 and 49 Vict. c. 3), sections 5, 7 (7), 11, and 12. The first part of section 11 of the Act of 1832 is repealed, and for the ownership franchise therein created is declared to be substituted the ownership occupation franchise conferred by section 5 of the Act of 1884, but which latter franchise is subject to the same conditions as the repealed franchise under the Act of 1832, which involves "the occupancy, either as proprietor . . . or liferenter," of qualifying premises for twelve months previous to 31st July.—See section 16, *infra*.

(*f*) There is no similar exception in favour of *burgh* owners acquiring by succession, marriage, &c., such as is referred to in connection with county owners in section 6, footnote (*j*).

(*g*) The remarks already made on section 7 of the Reform Act of 1832 are equally applicable to the first part of section 11 of that Act. —See section 6, footnote (*f*), and footnote (*e*), *supra*.

(*h*) See sections 14 and 15, *infra*.

(*i*) Reform Act 1832, section 11. The proprietor of long leasehold subjects is qualified as "true owner,"—*Irons* v. *Wauchope*, 1892, 20 R. 91, 30 S.L.R. 80.—See sections 8, 9, and 10, *infra*, further on this point.

(*j*) See section 17, *infra*.

(*k*) See Nicholson, p. 114, and cases quoted, and Cay, p. 466.

(*l*) See sections 30 and 31, *infra*, as to disqualifications.

8. *Limited Owners.*—In connection with the franchise the term "owner" is used in its widest signification; it embraces *heirs of entail* (*h*) (including heirs to whom the fee has been propelled) (*a*), and *beneficiaries* (*h*) on a trust-estate where their interest is of the nature of a heritable right (*b*). *Adjudgers* (*h*) do not acquire an absolute right to the subjects adjudged until the expiry of the legal (ten years), followed by either (1) a declarator of such expiry, or (2) possession for the prescriptive period (forty years) upon a sasine (*c*), and it is not until they acquire such absolute right (*d*) that they are qualified as owners. *Long lease holders* (*h*), under leases for not less than fifty-seven years, exclusive of breaks, are qualified as owners in *counties* under the Reform Act of 1868 (*e*), but not under the Reform Act of 1832 (*f*), and they are not qualified as owners in *burghs* (*g*). Persons possessing

subordinate rights of property, such as *trustees* (*i*), *security holders* (*j*), *members of a building society* (*k*), and *shareholders in a joint stock company* (*k*), are not qualified as owners.

(*a*) *Skeete* v. *Buchanan*, 1879, 7 R. 15, 17 S.L.R. 173.

(*b*) Their interest would seem to be heritable in its character whenever the trust-estate comprises heritage, and there is no *express* direction to convert the same into money, even though the trustees have an (unexercised) power of sale. A comparison of the cases *Anderson* v. *Ovens*, 1879, 7 R. 42, 17 S.L.R. 170, and *Anderson* v. *Niven*, 1880, 8 R. 4, 18 S.L.R. 65, will clearly show the principle of law here involved. Reference may also be made to *Wilson* v. *Cowan*, 1868, 7 M. 299; *Martin* v. *M'Lurg*, 1868, 7 M. 299, 6 S.L.R. 104; *Stewart* v. *Campbell*, 1869, 8 M. 13, 7 S.L.R. 85; *Skeete* v. *Duncan*, 1873, 1 R. 18, 11 S.L.R. 35.

(*c*) This refers to adjudgers in execution for debt, and not to adjudgers in security merely (who never become more than security holders), nor to adjudgers in implement (who obtain an absolute title at once). Adjudication in execution is a mode of diligence against heritable estate, having for its object the transfer to the creditor of the land or other heritable estate of the debtor in security and satisfaction of a liquid debt. Under the proceedings the creditor obtains a title to the lands, but at first it is in security merely, and is qualified by a power on the part of the debtor to redeem the lands on payment of the debt. This power of redemption may be exercised at any time within the period of ten years (called "the legal"), and thereafter the creditor's title may be made absolute by declarator or prescriptive possession, as above mentioned.—See Bell's Prin., sections 824 *et seq.* and 2299 *et seq* The Conveyancing (Scotland) Act, 1874 (37 and 38 Vict. c. 94), section 34, does not shorten the prescriptive period in the case of adjudications,—*Hinton* v. *Connell's Trustees*, 1883, 10 R. 1110.

(*d*) *Hill* v. *Hill*, 1871, 10 M. 3, 9 S.L.R. 9, which decides that until the adjudger obtains such absolute right the original owner continues qualified.

(*e*) Reform Act 1868 (31 and 32 Vict. c. 48), sections 5 and 59. An assignee of a long lease and a subtenant under a sublease for fifty-seven years and upwards are also qualified as owners,—*Wylie* v. *Cairns*, 1870, 9 M. 4, 8 S.L.R. 23. It is in the option of a long lease holder to be enrolled either as owner or tenant,—*Kirk* v. *M'Gowan*, 1870, 9 M. 11, 8 S.L.R. 641.

(*f*) *Clark* v. *Hector*, 1866, 5 M. 66, 3 S.L.R. 63.

(*g*) *Irons* v. *Wauchope*, 1892, 20 R. 91, 30 S.L.R. 80.

(*h*) The limited ownership of "heirs of entail" and the indirect interest of a "beneficiary" do not seem to constitute them "true owners" in burghs, but "adjudgers" on acquiring an absolute right become "true owners." Long lease holders are not qualified as owners in burghs,—*Irons* v. *Wauchope*, quoted footnote (*g*) *supra*, which decides that the actual owner of the leasehold subjects (to whom the chief rent is payable) is entitled to be registered as the true owner under the Reform Act of 1832. Under the Reform Act of 1868 long lease holders in counties are considered as owners of the subjects, so that all that is left to the actual proprietor in this case is the ownership of the chief rents (*Lee* v. *Matheson*, 1871, 10 M. 5, 9 S.L.R. 13), which does not now afford a qualification—Reform Act 1884 (48 and 49 Vict. c. 3), sections 4 (1) and 11—and therefore in counties long leasehold subjects do not seem to afford a qualification to the actual owner thereof.

In the valuation roll in both burghs and counties, heirs of entail, trustees holding trust property (and not the beneficiaries even though qualified as above) adjudgers, although not having an absolute right (see footnote (*c*)), and heritable creditors in possession of the security subjects under a proper legal process, or holding an *ex facie* absolute disposition (see footnote (*j*)), and tenants holding under leases of more than twenty-one years, or (in the case of minerals) of more than thirty-one years, are all entered as owners, but in counties the word "lessee" is added after the names of the tenants so enrolled. Such enrolment does not, however, entitle these persons to an ownership franchise unless they are qualified as above, nor does possession by a heritable creditor disqualify the owner,—*M'Culloch* v. *Sharpe*, 1865, 4 M. 137, 1 S.L.R. 50. See Lands Valuation Act, 1854 (17 and 18 Vict. c. 91), sections 6 and 42; Burgh Voters Registration Act, 1856 (19 and 20 Vict. c. 58), section 17; Commissioners of Supply (Scotland) Act, 1856 (19 and 20 Vict. c. 93), section 2; Lands Valuation (Scotland) Amendment Act, 1895 (58 and 59 Vict. c. 41), section 4.

(*i*) Cay, p. 124, and Nicholson, p. 41.

(*j*) Reform Act 1832 (2 and 3 Will. IV. c. 65), section 7, which excepts "debts heritably secured" from the qualifying subjects therein mentioned. The same rule holds although the title of the security holder be an *ex facie* absolute disposition,—*M'Kenzie* v. *Watt*, 1891, 19 R. 297, 29 S.L.R. 239.—See section 14, footnote (*g*).

(*k*) That is to say, they are not qualified as owners of the property belonging to the society or company, as the case may be.—See section 10, footnote (*e*). Members of a building society may be qualified on subjects acquired by them from the society, but they must instruct their right to these subjects as individual owners, and this is a question of title, as to which see section 14, *infra*.

9. *Liferenters* (*a*) are qualified as owners, and they (not the *fiars*) are entitled to be registered in respect of the subjects (*b*) held by them. They may be grouped under three heads:—

(I.) *Conventional Liferenters.*—Their right is based upon contract, and may be created either by direct grant from the fiar ("liferent by constitution"), or by exception from a grant of the fee of the qualifying subjects ("liferent by reservation.") (*c*).

(II.) *Legal liferent*, when used in reference to the franchise, implies the right in virtue of which a husband votes for property belonging to his wife (*d*). The qualifying subjects must be held (*e*) by the wife as "true owner" in *burghs*, but in *counties* they may be held (*e*) by her as full owner, or as liferenter (*f*) (not being official liferenter) (*g*) in virtue of terce (*h*), as beneficiary under trust (*i*), or under marriage-contract (*j*); or the qualification may be afforded by similar

subjects held (*e*) by the husband himself in courtesy after the wife's death (*k*).

(III.) *Official liferenters* are qualified provided that subjects of sufficient value are attached to an office which is (either actually or in effect) held by them *ad vitam aut culpam*, and that they have a beneficial interest in these subjects during their tenure of office (*l*). Ministers of the Established Church and old parochial schoolmasters are the chief examples (*m*). Ministers of dissenting churches, non-parochial schoolmasters, and non-parochial ministers of the Established Church may also be qualified as official liferenters (*n*). Schoolmasters appointed under the Education Act are also qualified, though not holding office *ad vitam aut culpam* (*o*).

(*a*) Liferenters are qualified as owners (1) in *counties* under the Reform Act 1832 (2 and 3 Will. IV. c. 65), sections 7 and 8, and the Reform Act 1868 (31 and 32 Vict. c. 48), sections 5 and 14; and (2) in *burghs* under the Reform Act 1832, section 11, and the Reform Act 1884 (48 and 49 Vict. c. 3), sections 5 and 7 (7). The names of conventional and official liferenters appear in the proprietors' column of the valuation roll, and in the case of legal liferenters the names of both husband and wife are given in this column, unless the husband holds under courtesy, in which case his name alone appears.

(*b*) The liferent may be of any subjects which would afford a qualification to a full owner.—See section 11, *infra*,—*M'Crindle* v. *Rutherford*, 1863, 2 M. 187; *Oliver* v. *Rutherford*, 1863, 2 M. 188; *Innes* v. *Robertson*, 1878, 6 R. 4, 16 S.L.R. 80; and *Halley* v. *Stirling*, 1878, 6 R. 12, 16 S.L.R. 82; but it must be an actual liferent with right to draw the profits of the subjects liferented, and thus the mere right to an annuity secured over heritable subjects does not afford a qualification,—*M'Culloch* v. *Freeland*, 1865, 4 M. 130, 1 S.L.R. 50; *M'Culloch* v. *Smith*, 1865, 4 M. 132, 1 S.L.R. 50.

(*c*) Bell's Prin. sections 1039-1041. Conventional liferenters are not "true owners" in burghs, and therefore must be in actual occupation.

(*d*) In *counties* under the Reform Act 1832, section 8, and the Reform Act 1868, section 14, and in *burghs* under the Reform Act 1832, section 11, which provides that it is only husbands of "true owners" that are qualified. A legal liferenter is qualified as husband of the owner, and independently of whether his rights in the rents of the subjects have or have not been excluded either legally or conventionally.

(*e*) In *burghs* a qualification is afforded if the subjects are acquired at any time before the Registration Court which considers the claim (see section 7, footnote (*c*)). In *counties* the possession may be either wholly by the wife, or wholly by the husband in "courtesy," or partly by the husband in "courtesy" in continuation of his wife's possession; and it is sufficient if the subjects have been acquired at any time prior to 31st July preceding the Registration Court which considers the claim (see section 6, *supra*), but it must continue down to the Registration Court.

(*f*) *Boylan* v. *Rutherford*, 1865, 3 M. 414 ; *Hilson* v. *Home*, 1870, 9 M. 5 ; and *Forbes* v. *Halley*, 1882, 10 R. 4.

(*g*) *Boyle* v. *M'Gowan*, 1877, 5 R. 10.

(*h*) That is to say, a woman's second husband may be qualified in respect of her "terce" out of her former husband's estate. Terce is a liferent provided by law to a widow out of her deceased husband's heritable estate ; it extends to one-third of the heritable estate belonging to the husband which was capable of being feudalised, and in which he died infeft as of fee (his sasine being the measure of the widow's right), and it embraces not only corporeal heritage, *e.g.*, lands, houses, &c. (whether held feu or burgage), but also incorporeal subjects, such as heritable securities (which, however, do not afford a franchise qualification ; see section 8, footnote (*j*)) ; but terce is not due from the mansion-house and offices of the estate, or from minerals, superiorities, or leases. It is unaffected by the fact of whether there are or are not children of the marriage, and a widow's right to it is excluded by her express discharge thereof, or by her acceptance of a conventional provision.—See Bell's Prin. section 1595 *et seq.*

(*i*) See section 8, *supra*, footnote (*b*) ; *Boylan* v. *Rutherford*, quoted footnote (*f*) ; and *Blackwood* v. *Veitch*, 1878, 6 R. 1, 16 S.L.R. 74.

(*j*) *Forbes* v. *Halley*, quoted footnote (*f*), *supra*.

(*k*) Courtesy is a liferent to which a surviving husband is entitled by law over the *whole* of his deceased's wife's heritable estate to which she acquired right as heir, and in which she died infeft as of fee, provided that a living child is born of the marriage (whether it survive the mother or not), and is, or would have been by survivance, her heir to such estate.—See Bell's Prin., section 1605 *et seq.* Where a father conveys heritable subjects by will to one of his daughters her husband's courtesy is limited to the extent to which she was *ulioquin successura* to these subjects,—*Walls* v. *Wilkin*, 1885, 13 R. 218.

(*l*) In *counties* it is sufficient, if the official liferenter has been in right of the subjects at any time prior to 31st July preceding the Registration Court which considers the claim (see section 6, footnotes (*i*) and (*j*)) ; but in *burghs* such liferenter (not being a "true owner") must have had actual occupation of the subjects for twelve months previous to 31st July (see section 7, footnotes (*e*) and (*i*)) ; and in both cases possession must continue to the Registration Court,—*Paton* v. *Morrison*, 1871, 10 M. 1, 9 S.L.R. 8 ; *Home* v. *Paterson*, 1872, 11 M. 1, 10 S.L.R. 15. In the case of a minister it is induction and not appointment by the congregation which fixes the date of the commencement of his right,—*Mitchell* v. *Halley*, 1879, 7 R. 11, 17 S.L.R. 173.

(*m*) Ministers are entitled to be registered on their manses and glebes, and schoolmasters on their dwelling-houses and gardens, assuming always that these are of qualifying value, as to which see section 13, *infra*. As to title, see section 15, *infra*.

(*n*) Whether they are qualified or not is mainly a question of title, as to which see section 15, footnote (*e*). The question is now of less importance than formerly, as after they have been in possession for the requisite period they will be qualified as householders.—See section 25, *infra*.

(*o*) Education Act, 1878 (41 and 42 Vict. c. 78), section 24,—*Murray* v. *Morton*, 1878, 6 R. 26, 16 S.L.R. 84.

10. *Joint Owners.*—Where a property is held by two or more *pro indiviso* proprietors, one, and one only, of such proprietors is entitled to be registered as owner, and his interest

in the subjects must of itself be sufficient to afford a qualification (*a*); and this rule generally applies to all classes of owners (*b*). There is an exception, however, to the rule in the case of persons (*c*) who have acquired their interest by *succession* (whether testate or intestate) or *marriage* (including marriage settlement) (*d*), or who are *partners* in the joint occupation of subjects for the purposes of trade (*e*); *all* of such owners (*f*) are entitled to be registered, provided their interest is sufficient to afford a qualification (*g*). Where the interest of each joint owner is not otherwise legally defined, it is to be ascertained by an equal division of the total value (*h*) among the whole proprietors (*i*).

(*a*) Reform Act 1884 (48 and 49 Vict. c. 3), section 4 (2). If the joint owners are absolute proprietors that one of them who is so entitled to be registered is a "true owner" under the *burgh* franchise,—*Roughhead*, 1885, 13 R. 75, 23 S.L.R. 52. Such joint owner does not therefore require to be in actual occupation of the qualifying subjects, and differs in this respect from joint owners in burghs prior to 1884,—(*c*) *infra;* and a qualification is afforded if the subjects are acquired at any time before the Registration Court.—Section 7, footnote (*c*).

(*b*) *Miller* v. *Fisher and Others*, 1863, 2 M. 192 (liferenters), and *Cunninghame* v. *Grossart*, 1886, 14 R. 121, 24 S.L.R. 84 (long lease holders).

(*c*) Reform Act 1884, section 4 (2). There is a further exception in virtue of the saving clause of the same Act (section 10) in favour of joint owners who at the date of the passing of the Act (6th December 1884) were registered in respect of joint qualifications then existing; they are entitled "to be from time to time registered and to vote . . . in respect of such qualification in like manner as if this Act had not passed." Previous to 1884 there was in *counties* no restriction as to the number of joint owners qualified under the Reform Act 1832 (2 and 3 Will. IV. c. 65), section 7; but under the Reform Act 1868 (31 and 32 Vict. c. 48), section 14, not more than two joint owners were entitled to be registered upon any one subject, however large its value, unless they had acquired their interests by succession or marriage, or the subjects were occupied for the purposes of trade, when the restriction did not apply. In *burghs* there was prior to 1884 no restriction as to the number of joint owners qualified, but (even where their interests were unequal) it was necessary that the total value of the subjects should be "£20 or upwards."—Reform Act 1832, section 12. Further, a joint owner to be qualified required to be in actual occupation of the qualifying subjects,—*Fairies* v. *M'Guffie*, 1873, 1 R. 13, 11 S.L.R. 33; but it was not necessary for his qualification that the other joint owners should also be in occupation,—*Stewart* v. *Tait*, 1868, 7 M. 300, 6 S.L.R. 52. Voters whose rights are preserved under the above saving clause are accordingly still qualified under the previously existing conditions, provided that they were registered as joint owners in terms thereof in the voters roll of 1884-85,—*Fox* v. *M'Kenzie*, 1892, 20 R. 87, 30 S.L.R. 78.

(*d*) See section 9 (II.), *supra*.

(*e*) The law as to partnership is now largely regulated by the Partnership Act, 1890 (53 and 54 Vict. c. 39), and reference may be

specially made to section 2 thereof, which declares that "joint property, common property, or part ownership does not of itself create a partnership," so that both joint ownership and partnership are required for this qualification. It is further to be noted that the partners need to be in actual occupation of the premises.—Reform Act 1884, section 4 (2). In the case of a "true owner" in a burgh it is sufficient if such occupation commences prior to the Registration Court which considers his claim. —See footnote (*f*), *infra*, and section 7, footnote (*e*). Shareholders of a joint stock company, whether incorporated or not, and members of a building society, are not regarded as joint owners occupying for the purposes of trade the subjects belonging to the company or society,—*Leiper* v. *Hamilton*, 1868, 7 M. 303; *Dove* v. *Young*, 1868, 7 M. 304; *Arthur* v. *Baird*, 1868, 7 M. 308. Indeed they are not proper owners of these subjects at all; they merely have right to a share of the free assets of the company, and this right is moveable, and descends to executors apart altogether from the fact whether the assets of the company are in their nature heritable or moveable.

(*f*) Each of these owners is entitled to be registered "in the like cases and subject to the like conditions as if he were sole owner," and, if absolute proprietors, they are qualified as "true owners" in burghs.—See footnote (*a*).

(*g*) Where one joint owner has acquired by purchase, and the others by succession or marriage, the whole owners (assuming the interest of each to be of sufficient value) would seem entitled to be registered,—*Craig* v. *M'Kie*, 1870, 9 M. 6, 8 S.L.R. 40.

(*h*) See section 13, *infra*.

(*i*) Reform Act 1884, section 4 (2). This rule seems an absolute one in the case of joint owners who are copartners,—*Blair* v. *Torrance*, 1868, 7 M. 319.

II. Subjects.

11. *Character.*—The subjects affording a qualification in *counties* consist—(1) Under the Reform Act of 1832 (*a*) of "any lands, houses, or other heritable subjects" (except feu-duties (*b*) or ground-annuals, and debts heritably secured) of the annual value of £10, and (2) under the Reform Act of 1868 (*c*) of "lands and heritages" as defined by the Valuation Act of 1854 (*d*) of the annual value of £5. The qualifying subjects in *burghs* consist (1) in the case of "true owners" of buildings (*e*) which, either separately or in conjunction with land possessed by the same person, afford the qualifying value, and (2) in the case of other owners, of "any land or tenement" (*f*) affording the qualifying value, which in both cases is £10 (*g*) a year.

(*a*) 2 and 3 Will. IV. c. 65, section 7. Practically this now amounts to the same thing as lands and heritages under the Reform Act of 1868 (see footnotes (*c*) and (*d*), *infra*), except that teinds afford an ownership qualification to the titular or other proprietor under the former, but not under the latter Act.—Cay, pp. 187-190, Nicholson, p. 50.

(*b*) Prior to the passing of the Reform Act 1884 (48 and 49 Vict. c. 3)

owners of superiorities were qualified as owners of the feu-duties pertaining to the same under the Reform Act 1832, section 7 (*Lee* v. *Matheson*, 1871, 10 M. 5, 9 S.L.R. 16; *Halley* v. *Stirling*, 1878, 6 R. 12, 16 S.L.R. 82), and owners of ground-annuals of sufficient value were also qualified (*Guy* v. *Reston*, 1866, 5 M. 62, 3 S.L.R. 64; *Ferguson* v. *Lamy*, 1878, 6 R. 13, 16 S.L.R. 78); but section 4 of the Act of 1884 enacts that "a man shall not be entitled to be registered in respect of the ownership of any rent-charge," which expression ("rent-charge") includes "a feu-duty in Scotland" (see section 11 of same Act). This is, however, so far modified by the saving clause of the Act (section 10) in virtue of which feu-duties and ground-annuals still afford a qualification, provided that the owners thereof were registered in respect of such qualification at the date of the passing of the Act (6th December 1884). The qualification must, however, be in terms of the Reform Act of 1832, as feu-duties did not afford a qualification under the Reform Act of 1868 (*Baird* v. *Ballantyne*, 1869, 8 M. 18, 7 S.L.R. 17).

(*c*) Reform Act 1868 (31 and 32 Vict. c. 48), section 5.

(*d*) The Lands Valuation (Scotland) Act, 1854 (17 and 18 Vict. c. 91), section 42. This Act, as modified by the Sporting Lands Rating (Scotland) Act, 1886 (49 Vict. c. 15), the Statute Law Revision Act, 1892 (55 and 56 Vict. c. 19), and the Lands Valuation (Scotland) Act, 1902, (2 Edw. VII. c. 25), declares that the expression "lands and heritages" shall extend to and include "all lands, houses, shootings, and deer forests, fishings, woods, copse, and underwood from which revenue is actually derived, ferries, piers, harbours, quays, wharfs, docks, canals, railways, mines, minerals, quarries, coalworks, waterworks, limeworks, brickworks, ironworks, gasworks, factories, and all buildings and pertinents thereof, and all machinery fixed or attached to any lands or heritages (including in any building occupied for any trade, business, or manufacturing process, all machinery, machines, or plant, in or on the lands or heritages for producing or transmitting, first, motive power, or for heating or lighting such building, but, save as thus provided, not including machines, tools, or appliances which are only so fixed that they can be removed from their place without necessitating the removal of any part of the building), provided always that no mine or quarry shall be assessed unless it has been worked during some part of the year to which such assessment applies." It is to be observed that the above enumeration, while pretty exhaustive, is not necessarily conclusive, and that all "lands and heritages," of whatever kind, fall to be entered in the valuation roll, and thus afford a qualification.—*Valuation of Property* (Armour), pp. 54, 55. Mere omission from the roll does not disqualify, as the roll is merely *prima facie* evidence of its contents. —See section 13, footnote (*f*). Shootings *per se* (unconnected with a house) afford a qualification,—*Richardson* v. *Stewart*, 1878, 6 R. 17, 16 S.L.R. 76; *Paterson* v. *Johnston*, 1879, 7 R. 17, and also salmon-fishings irrespective of the annual close-time,—*Dunn* v. *Cotesworth*, 1874, 2 R. 5, 12 S.L.R. 31. Woods, copse, and underwood, although not yielding a regular revenue, enter the valuation roll,—*Allan* v. *Dunlop*, 1858, 20 D. 1354. The exception in favour of mines and quarries, if unworked, does not apply to "minerals,"—*Blantyre Parochial Board* v. *Assessor for Lanarkshire*, 15th March 1883, 10 R. 773. Market dues and customs are not "lands and heritages" and do not qualify,—*Johnston* v. *Alexander*, 1868, 7 M. 308. Reference may also be made to the Advertising Stations (Rating) Act, 1889 (52 and 53 Vict. c. 27), and the Lands Valuation (Scotland) Amendment Act, 1895 (58 and 59 Vict. c. 41), and also to the Interpretation Act, 1889 (52 and 53 Vict. c. 63),

by section 3 whereof "land" is declared to include "messuages, tenements, and hereditaments, houses, and buildings of any tenure."

(*e*) The case of *Davidson* v. *Johnstone*, 11th December 1903, 41 S.L.R. 171, decided that the franchise created in favour of "true owners" by the unrepealed portion of section 11 of the Reform Act of 1832 stands entirely on that Act, under which the qualifying premises are "any house, warehouse, counting-house, shop, or other building . . . which, either separately or jointly with any other house, warehouse, counting-house, shop, or other building . . . or with any land owned" by the same person, "shall be of the yearly value of £10." It is evident, therefore, that land *per se* does not afford a qualification for "true owners." As to what constitutes a "building," see *Johnston* v. *Guild*, 1884, 12 R. 42, 22 S.L.R. 34; also *Morish* v. *Harris*, 1865, L.R. 1 C.P. 155; *Piercy* v. *Maclean*, 1870, L.R. 5 C.P. 252.

(*f*) Reform Act 1884, sections 5 and 11, which latter section declares that the expression "land and tenement" shall in Scotland include "lands and heritages," so that the qualifying subjects for owners (other than "true owners") in burghs are practically the same as those for owners in counties under the Reform Act of 1868; see footnote (*d*), *supra*. Section 11 of the Act of 1884 also provides that "land and tenement" shall include "any part of a house separately occupied for the purpose of any trade, business, or profession," but this has no very practical application to the ownership franchise, as the qualifying subjects must be held under a separate title, and so will appear in the valuation roll.

(*g*) See section 13, *infra*.

12. *Locality.*—The subjects must be *wholly* situated in the county or division of the county, or in the burgh or division of the burgh, in which their owners claim a right to vote in respect of the qualification they afford (*a*), but where they consist of buildings and the burgh boundary passes through them they are held to be wholly within the burgh (*b*). The qualifying subjects may consist of separate premises held simultaneously (*c*), provided they are so held in the same character (*e*), and the same remark applies to subjects held successively (*d*) in the same character (*e*), except that in order to a qualification from subjects held successively *all* owners (whether in *counties* or *burghs*) must have been in personal occupation of the same for twelve months prior to 31st July of the year in which they claim (*f*.)

(*a*) Mr. Cay (pp. 199, 317, and 688) remarks that this is quite obvious from the terms of the Reform Act 1832 (2 and 3 Will. IV. c. 65), sections 3, 5, 7, 9, 11, and 35, and the subsequent statutes proceed upon the same lines.—Reform Act 1868 (31 and 32 Vict. c. 48), sections 3, 5, 6, 11, 12, 13, and 59; Reform Act 1884 (48 and 49 Vict. c. 3), sections 2, 5, and 11; and Redistribution of Seats Act, 1885 (48 and 49 Vict. c. 23), sections 6, 7, 8, 9, 17, and 18. The Reform Act 1832, section 3, provides that "all properties lying locally within the limits of any county or shire, though hitherto constituting part of some other

county, shall" afford a qualification in "the county in which they are locally situated," and this provision is still in force,—*Halley* v. *Brown*, 1877, 5 R. 7; 15 S.L.R. 49. A "county" includes a "division of a county" and "any combination of counties," or of counties and "portions of counties," returning a Member to Parliament; any alteration prior to 26th March 1885 of the boundary of a county incidental to the constitution, division, or alteration of a parish for poor-law purposes is effectual for Parliamentary purposes; but an Order by the Boundary Commissioners under the Local Government Act of 1889 altering the boundary of any county or burgh for the purposes of that Act has no such effect.—Reform Act 1868, section 59; Redistribution of Seats Act, 1885, sections 18 and 34; and Local Government (Scotland) Act 1889 (52 and 53 Vict. c. 50), section 95.

(*b*) Reform Act 1832, section 5 (4). Reform Act 1868, section 56; and *Cairns* v. *Steedman*, 1884, 12 R. 44, 22 S.L.R. 35.

(*c*) The terms of the statutes specifying the qualifying subjects are broad enough to warrant the combination of subjects held simultaneously in the same character,—see section 11, footnotes (*a*), (*c*), and (*e*), Cay, pp. 386 and 726; but the subjects so held simultaneously must be within the same county or burgh, or division of a county or burgh,—see footnote (*d*) *infra*.

(*d*) There must be no lapse of time between the loss of the one subject and the acquisition of the other one, as that would break the continuity of possession, and so disqualify,—*Adair* v. *Kay*, 1874, 2 R. 9, 12 S.L.R. 38; see also *Paterson* v. *Millar*, 1878, 6 R. 22. The subjects held successively must be in the same county or the same division of a county (as the case may be) in which the vote is claimed,—*Stewart* v. *Allan*, 1868, 7 M. 315; and the same rule holds as regards a burgh or division of a burgh (as the case may be), with this exception in favour of owners (other than "true owners"), that subjects situated in different divisions of the same parliamentary burgh afford a qualification for the division "in which the premises occupied by such person at the end of the period of qualification are situate."—Redistribution of Seats Act, 1885 (48 and 49 Vict. c. 23), section 10. It is doubtful whether subjects held successively in separate burghs forming part of a district of burghs afford a qualification, and the practice on the subject seems somewhat divergent. The decision in *Grant* v. *Mackenzie*, 1868, 7 M. 290, 65 S.L.R. 30, is rather adverse to such a qualification; but it is thought that if the point were now brought before the Court of Appeal they might take a different view, especially in view of the broad interpretation followed in the case of a householder in *Duncan* v. *Galt*, 1894, 22 R. 190, 32 S.L.R. 151.

(*e*) Thus ownership and tenancy cannot be combined so as to afford a qualification,—*Moncrieff* v. *Dalgleish*, 1868, 7 M. 315; *Greig* v. *M'Creath*, 1882, 10 R. 11. While, however, the subjects forming a combined qualification must be held in substantially the same character, absolute similarity is not insisted on. Full ownership may accordingly be combined with ownership in the minor capacities specified in sections 8 and 9, *supra*; and the combination is equally competent whether the subjects are held simultaneously or successively. In the case of subjects held successively the ownership may be sole ownership in the one case, and joint ownership in the other, provided that such joint ownership affords a qualification in terms of the Reform Act of 1884 (48 and 49 Vict. c. 3), section 4, as to which see section 10, *supra*. Where none of the joint owners are qualified on account of their respective interests being all below the statutory value, it is thought that it would be

competent to combine such joint interest with other subjects held simultaneously as sole owner, in order to obtain an ownership qualification, provided that the number of joint owners entitled to effect this combination was limited to the number enfranchised by section 4 of the Reform Act of 1884, as above mentioned.

(*f*) This seems to follow, from the express terms of the Reform Act 1832, section 12 (in burghs), and the Reform Act 1868, section 13 (in counties), as interpreted in *Learmont* v. *Young*, 1875, 3 R. 5, 13 S.L.R. 34. It is self-evident that a qualification from subjects held successively has no application to "true owners" in burghs.—See section 7, footnote (*c*).

13. *Value.*—The statutory value in *counties* is £10 under the Reform Act of 1832, and £5 under the Reform Act of 1868. Under both Acts (*a*) it must consist of clear yearly value, after deduction of "any feu-duty, ground-annual, or other annual consideration" which the owner is bound to pay "as a condition of his right" (*b*), and (under the Reform Act of 1868) after the further deduction of "any annuity, life-rent provision, or other such annual burden" (*c*). In *burghs* the statutory value for all owners is £10 (*d*), and in arriving at this value there are no deductions for feu-duties or otherwise falling to be made as in the case of counties. In both burghs and counties the value must endure for the qualifying period, and must continue to the date of the Registration Court (*e*). The valuation rolls of the previous year, and of the year in which the claim is made, are merely *primâ facie* evidence of the value and of its endurance (*f*).

(*a*) Reform Act 1832 (2 and 3 Will. IV. c. 65), section 7, by which it is provided that the subjects "shall be of the yearly value of ten pounds, and shall actually yield, or be capable of yielding, that value to the claimant," and Reform Act 1868 (31 and 32 Vict. c. 48), section 5, by which it is provided that "the yearly value, . . . as appearing in the valuation roll of the county, shall be five pounds or upwards." These two expressions practically amount to the same thing, as the assessor takes the probable return to the proprietor if the subjects are unlet, and the actual return if they are let, as fixing the annual value falling to be inserted in the valuation roll. There is, however, an exception to the rule in the case of subjects held under leases of more than twenty-one years, or (in the case of minerals) of more than thirty-one years. In these cases the tenants appear in the valuation roll as owners, and the actual rent in the lease need not necessarily be taken as the annual value, which may be fixed at a higher amount if the character of the subjects warrant this.—The Lands Valuation (Scotland) Act, 1854 (17 and 18 Vict. c. 91), section 6. By the Reform Act 1832, section 7, it is provided that "where the whole profits and issues of any such subject do not arise annually, but at longer intervals, the worth and amount of such occasional profits shall be taken into computation in esti-

mating the annual value," but this refers to profits arising at regular stated intervals longer than a year, and not to occasional uncertain profits,—*Lee* v. *Matheson*, 1871, 10 M. 5, 9 S.L.R. 13. There is no similar provision in the Reform Act of 1868, but the same principle applies to county owners qualified under that Act, because the assessor, in arriving at the yearly value which enters the valuation roll, is entitled to take into account "any consideration other than the rent" payable in respect of the premises.—Valuation Act, 1854, section 6. Interest on improvement expenditure, and improvements made by a tenant in virtue of an obligation undertaken by him, are treated as a consideration other than rent, and so increase the value as appearing in the valuation roll; but improvements made voluntarily do not produce this result unless and until they accrue to the landlord at the termination of the tenancy.—*Valuation of Property* (Armour), pp. 207-226. Mere prospective value (*e.g.*, in the event of feuing) does not afford a qualification,—*Guy* v. *Paterson*, 1866, 5 M. 64, 3 S.L.R. 62.

(*b*) The words above quoted are taken from the Reform Act 1868, section 5, and the phraseology in the Reform Act 1832, section 7, is practically (although not absolutely) identical. Where the original feu is afterwards split up, the feu-duty to be deducted from any part is the feu-duty allocated on the proprietor thereof by the terms of his own right, and not the *cumulo* feu-duty which it may be in the power of the superior to operate out of the subject,—*Shaw Stewart* v. *Hector*, 1866, 5 M. 69, 3 S.L.R. 67; *Babtie* v. *Lindsay*, 1866, 5 M. 72, 3 S.L.R. 70; *Anderson* v. *Stewart*, 1869, 8 M. 6, 7 S.L.R. 81; *Paterson* v. *Brown*, 1878, 16 S.L.R. 83. In the case of a *pro indiviso* proprietor the feu-duty to be deducted is the proportion thereof effeiring to his share,—*M'Farlane* v. *Lamont*, 1866, 5 M. 77, 3 S.L.R. 71; *Tod* v. *Sharp*, 1866, 3 S.L.R. 74. By the County Voters Registration (Scotland) Act, 1861 (24 and 25 Vict. c. 83), section 4, and the Reform Act 1868, section 16, such feu-duties and other considerations require to be entered in a separate column in the valuation roll, but in cases where the feu-duty is elusory, the omission does not disqualify,—*Duncan* v. *Small*, 1868, 7 M. 326; *Blackwood* v. *Alexander*, 1870, 9 M. 1, 8 S.L.R. 18. The name of the person to whom such consideration is payable was also required to be inserted under these Acts, but this provision was repealed by the Registration Amendment (Scotland) Act, 1884 (48 and 49 Vict. c. 16), section 3 (4). Long leaseholders are qualified as owners under the Reform Act 1868, and in their case the chief rent payable under the long lease would require to be entered in this special column, and would form a deduction from the qualifying value,—*Wilkie* v. *Adair*, 1879, 7 R. 49, 17 S.L.R. 178. Arrears of feu-duty or casualties of superiority do not fall to be deducted.

(*c*) Reform Act 1868, section 5. Thus, where a tercer exists (as to which see section 9, footnote (*h*)), the value of the terce must be deducted from the value of the lands of a claimant heir,—*Henderson* v. *Maxton*, 1866, 5 M. 65, 3 S.L.R. 65. Public burdens do not fall to be deducted, nor does interest on a heritable debt or on a reserved real burden (even though part of the price of the qualifying subjects),—*Blackwood* v. *Ferguson*, 1882, 10 R. 6.

(*d*) Reform Act 1832, section 11, in which the expression used is "the yearly value of £10," and Reform Act 1884 (48 and 49 Vict. c. 3), section 5, in which the expression used is "a clear yearly value of not less than £10," and by section 11 of which latter Act "clear yearly value" is defined to mean "the annual value as appearing in the valuation roll," so that both of these expressions mean practically the same thing,—see footnote (*a*), *supra*. There is no provision in these statutes for the deduction of any feu-duty, ground-annual, or

other annual consideration in fixing the qualifying value for owners in burghs, and these duties do not appear in the burgh valuation roll. It may be noted that the word "burgh" used in the County Voters Registration Act, 1861, refers only to burghs which do not contribute to send a Member to Parliament, so that the electors therein are county voters. Under the Reform Act of 1832 there was a reason for the distinction between owners in counties and burghs in the matter of deduction of feu-duties, because under that Act feu-duties afforded an ownership qualification in counties (but not in burghs), and therefore formed a fair deduction from the value of the subjects to the actual county owner, but although the distinction is still maintained there is now no such reason for it.

(*e*) See sections 6 and 7, *supra*. In connection with the above general statement the position of "true owners" in burghs, as set forth in section 7, must be kept in view. A house in course of building at the commencement of the qualifying period, but which was then of sufficient value, has been held to afford a qualification,—*Herne* v. *Stirling*, 21st October 1872, 10 S.L.R. 14; and a house which has been burnt down, but which the owner at once proceeds to restore, continues to afford a qualification,—*Hunter* v. *Ballantine*, 1879, 7 R. 2, 17 S.L.R. 176. When the qualification consists of several subjects held simultaneously the aggregate annual value thereof must be of the statutory amount; but where it consists of several subjects held successively each such subject must be of the statutory value.

(*f*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 17, which provides that the valuation roll "shall, from and after the 15th day of August in the year in which such roll shall be made up, . . . be received and taken as *primâ facie* proof that the gross yearly rent or value of any subjects specified in such valuation roll is, and has been for the year from the 15th day of May in such year, of the amount set forth for the time in such valuation roll, and also as *primâ facie* proof that the persons therein set forth as proprietors, tenants, and occupants respectively have for the period to which such valuation applies been such proprietors, tenants, and occupants respectively as therein stated: Provided always that it shall be competent to prove to the satisfaction of any Sheriff or Court of Appeal . . . that any such subjects are or have been of a greater or of a less annual value than the value stated in such valuation roll." This Act (and not the County Voters Registration Act, 1861) is now the ruling statute in counties as well as burghs.—Reform Act 1884, section 8 (6), which provides that said Act of 1856 "shall, with the necessary variations and with the necessary alterations of notices and other forms, extend and apply to counties as well as to burghs." Notwithstanding the above-quoted provision in the Burgh Voters Registration Act of 1856, the Appeal Court, in a recent case (in which, however, that Act does not seem to have been pled) refused to permit evidence to be led to modify the value as appearing in the valuation roll in relation to an occupancy franchise under the Reform Act of 1884, sections 5 and 11, in respect that the qualifying value in that Act was expressly stated to be "the annual value as appearing in the valuation roll,"—*Harkness* v. *Scott*, 1899, 2 F. 268. The same principle would seem to apply to voters qualified under the Reform Act 1868, sections 5 and 6, as the qualifying value is there stated to be "as appearing from the valuation roll," and this view is supported by the following cases:—*Millar* v. *Rutherford*, 1865, 3 M. 412; *Dove* v. *Reid*, 1868, 7 M. 287; *Alexander* v. *Thomson*, 1868, 7 M. 325; *Sandilands* v. *Horne*, 1872, 11 M. 3, 10 S.L.R. 13; *Girvan* v. *Campbell*, 1885, 3 R. 1, in which it was held that the current

valuation roll was conclusive as to the value of the subjects appearing therein. These cases were, however, all decided prior to the Burgh Voters Registration Act of 1856 being made applicable to counties ; and apart from this the current valuation roll was not held to be absolutely conclusive in *M'Gaw* v. *Maitland*, 1868, 7 M. 327, 6 S.L.R. 103 ; *Taylor* v. *Munro*, 1868, 7 M. 327 ; *Maitland* v. *M'Credie*, 1868, 6 S.L.R. 106 ; *Brown* v. *Blackwood*, 1869, 8 M. 8, 7 S.L.R. 20 ; *Dunbar* v. *Rule*, 1883, 11 R. 167, 21 S.L.R. 125 ; *Mackenzie* v. *Fraser*, 1890, 28 S.L.R. 169. Looking to the broad terms of section 17 of the Registration Act of 1856, the view expressed in the text is adhered to irrespective of the above adverse decisions, and undoubtedly that view does apply to owners in counties qualified under the Reform Act of 1832 and to "true owners" in burghs who are qualified under the same Act, in which there is no reference to the valuation roll. The valuation roll of the previous year to that in which the claim was considered seems never to have been considered conclusive as to value,—*Stevenson* v. *Miller*, 1880, 8 R. 8, 18 S.L.R. 69 ; and where subjects are altogether omitted from the roll or there is an error as to name, it has always been held competent to supply the omission or to make the correction by means of a general proof,—*Brown* v. *Holmes*, 1868, 7 M. 325 ; *Blackwood* v. *Euman*, 1868, 7 M. 328 ; *Thomas* v. *M'Pherson*, 1873, 1 R. 7, 11 S.L.R. 32 ; *Morrison* v. *Anderson*, 1879, 7 R. 7, 17 S.L.R. 164.

III. Title.

14. To entitle a person to be registered as owner, it is not necessary that he be infeft in the qualifying subjects (*a*), or that he have a formal and complete title thereto (*b*), but some formal written evidence of title is insisted in (*c*). The documents founded on must be stamped (*d*), or at least be superseded by or referred to in a probative or stamped document (*e*). The title must have existed for the statutory period (*f*), and must continue to the date of the Registration Court (*g*) ; it must, moreover, be reasonably indefeasible, and not be nominal or fictitious (*h*).

(*a*) Both under the Reform Act of 1832 (2 and 3 Will. IV. c. 65), section 7, and the Reform Act of 1868 (31 and 32 Vict. c. 48), section 5, a *county* owner is qualified "whether he has made up his titles or is infeft or not," and the same rule is held by implication as applying to owners in *burghs*.—Reform Act, 1832, section 11 ; Cay, 558-559.

(*b*) *Stewart* v. *Macbeth*, 1868, 7 M. 293, 6 S.L.R. 49.

(*c*) *Gow* v. *Watson*, 1865, 4 M. 115, 1 S.L.R. 47 ; *Kinniburgh* v. *Donaldson*, 1865, 4 M. 119, 1 S.L.R. 149 ; *Sharp* v. *Stewart*, 1866, 5 M. 76 ; *Stewart* v. *Flanigan*, 1869, 8 M. 13, 7 S.L.R. 86 ; and *Kilpatrick* v. *Reid*, 1870, 9 M. 2, 8 S.L.R. 21 (where such informal titles as a minute of enactment upon articles of roup containing a clause of resumption in a certain event, an offer to purchase at a price payable by instalments, and a letter from Exchequer intimating a gift by the Crown, were sustained) ; but contrast *Bell* v. *Donaldson* and *Alexander* v. *Donaldson*, 1879, 7 R. 34 and 36, 17 S.L.R. 161 (where suspensive conditions in an

agreement of sale, not having been purified, the title was not sustained), —*Bishop* v. *Dove*, 1868, 7 M. 301 ; *Dalgleish* v. *Wright*, 1874, 2 R. 5, 12 S.L.R. 34 ; *Howden* v. *Blackwood*, 1881, 9 R. 1 ; and *Jack* v. *Patrick*, 1884, 12 R. 46 (in which it was held that the mere allocation by a building society of a property to one of its members is not a sufficient title) ; and *Cairns* v. *Monteith*, 1868, 7 M. 295 ; *Blackwood* v. *Thomson*, 1881, 9 R. 6 (in which receipts for taxes and feu-duties were held not sufficient to constitute a title).

(*d*) *Skeete* v. *Turnbull*, 1879, 7 R. 14.

(*e*) *Blackwood* v. *Ruickbie*, 1881, 9 R. 8, 19 S.L.R. 76 ; but see *Stewart* v. *Flett*, 1868, 7 M. 294, 6 S.L.R. 46.

(*f*) Sections 6 and 7, *supra*. In connection with the above general statement, the position of "true owners" in burghs, as set forth in section 7, must be kept in view. A disposition dated *after* the commencement of the qualifying period does not qualify unless it follows upon a written contract entered into before that date, which is binding upon both parties,—*Rutherford*, 1863, 1 M. 306 and 315 ; *Dalgleish* v. *Wright*, quoted *supra* ; *Blackwood* v. *Thomson*, quoted *supra* ; and *Blackwood* v. *Ruickbie*, quoted *supra* ; but if the disposition is dated before the commencement of the qualifying period, the fact that it is not delivered until after that date does not affect the qualification,—*Mathewson* v. *Rutherford*, 1865, 3 M. 413 ; *Paterson* v. *Rutherford*, 1865, 3 M. 421.

(*g*) See sections 6 and 7, *supra*. The mere sale of the qualifying subjects does not disqualify if the date of the purchaser's entry is after the Registration Court,—*Latta* v. *Raeburn*, 1868, 7 M. 298 ; or if the sale is subject to suspensive conditions which have not been purified,—*Rutherford* v. *Sandemans*, 1883, 11 R. 171, 21 S.L.R. 127. Nor does disqualification arise from the granting of a security in the form of *ex facie* absolute disposition, but the proof that it is a security must be in writing and stamped,—*Jardine* v. *M'Culloch*, 1865, 4 M. 138, 1 S.L.R. 50 ; *Macfarlane* v. *Cooper*, 1866, 5 M. 79, 3 S.L.R. 73 ; *Monteith* v. *Scott*, 1868, 7 M. 300 ; *Skeete* v. *Stewart*, 1879, 7 R. 12, 17 S.L.R. 172 ; *M'Kenzie* v. *Watt*, 1891, 19 R. 297, 29 S.L.R. 239.

(*h*) *Rutherford* v. *Young*, 1863, 2 M. 180 ; *Oliver* v. *Rutherford*, 1863, 2 M. 188 ; *Gow* v. *Watson*, quoted footnote (*c*) ; *Hill* v. *Hill*, 1871, 10 M. 3, 9 S.L.R. 9.

15. Unless in very special cases, the claimant is not bound to establish his author's title, but there are exceptions to this rule in the case of a claim on apparency, or by a husband in respect of subjects belonging to his wife (*a*). An official liferenter (*b*) must prove his appointment and induction (mere appointment not being sufficient) (*c*), and this is all that is necessary in the case of ministers of the Established Church and old parochial schoolmasters (*d*) ; other persons in a somewhat similar position to these are also qualified, but they must in addition prove that they hold their office substantially *ad vitam aut culpam*, and that they are the beneficial owners of the qualifying subjects during their incumbency (*e*).

(*a*) Cay, pp. 78 and 143 ; Nicholson, p. 68 ; *Douglas* v. *Adair*, 1874, 2 R. 10, 12 S.L.R. 38. See also section 9 (II.), *supra*.

(*b*) See section 9 (III.), *supra*.

(*c*) *Mitchell* v. *Halley*, 1879, 7 R. 11, 17 S.L.R. 173.

(*d*) Teachers under the Education Act of 1872 are now in an equally favourable position.—See section 9, footnote (*o*).

(*e*) Cay, p. 106; *Tulloch*, 1863, 1 M. 306 and 312; *Rutherford* v. *Young*, 1063, 2 M. 180; *Renton* v. *Robin*, 1863, 2 M. 189; *Dobbie* v. *Robson*, 1863, 2 M. 191; *Sharp* v. *Cazenove*, 1866, 5 M. 77; *Robbie* v. *Meiklejohn*, 1868, 7 M. 296; *Cole* v. *Raeburn*, 1870, 9 M. 13, 8 S.L.R. 22; *Wardrop* v. *Cockburn*, 1874, 2 R. 6, 12 S.L.R. 33; *M'Gregor* v. *Caldwell*, 1873, 1 R. 15, 11 S.L.R. 33; *Brown* v. *Paterson*, 1876, 4 R. 5, 14 S.L.R. 76; and *Innes* v. *Robertson*, 1878, 6 R. 4, 16 S.L.R. 80. As a general rule these parties, where they cannot qualify as owners, will be qualified as householders, although *in counties* they will not come on to the roll quite so soon under this latter franchise, which requires twelve months' occupation prior to 31st July.—See sections 25 and 28, *infra*.

IV. Possession and Residence.

16. *Possession* is either *civil* or *natural*. Civil possession is possession by an owner through his tenants; natural possession is possession by an owner himself, either personally or through his servants, and is practically equivalent to occupancy (*a*). Natural possession or occupancy may, however, be constructive, and does not necessarily involve residence (*b*) on the qualifying subjects, but where the subjects consist in whole or in part of a dwelling-house it excludes the residence there of a tenant or other persons not being the family or servants of the owner. As a general rule (*c*) in both *counties* and *burghs* the qualifying possession may be either civil or natural; and in both cases it must have endured for the qualifying period and continue to the date of the Registration Court (*d*).

(*a*) Ersk. Inst. 2, 1, 22.

(*b*) *Stewart* v. *Smith*, 1868, 7 M. 318; *Richardson* v. *Stewart*, 1878, 6 R. 18, 16 S.L.R. 66; *Weatherhead* v. *Moffat*, 1878, 6 R. 20; *Johnston* v. *Buchanan*, 1879, 7 R. 97, 17 S.L.R. 173; *Anderson* v. *Smith*, 1879, 17 S.L.R. 1858; *Lunan* v. *Allan*, 1880, 8 R. 13, 18 S.L.R. 69; *Lynn* v. *Henderson*, 1873, 1 S.L.T. 364.

(*c*) There are, however, the following exceptions to the general rule that civil possession is sufficient for an ownership qualification, viz.—(1) owners in burghs other than "true owners" require to be in actual occupation,—section 7, footnote (*e*); (2) joint owners in both counties and burghs who, as partners, occupy subjects for the purposes of trade require to be in actual occupation,—section 10, footnote (*e*); and (3) owners in both counties and burghs qualified in respect of subjects held successively require to be in actual occupation,—section 12, footnote (*f*).

(*d*) See sections 6 and 7, *supra*; *Howman* v. *Scott*, 1874, 12 S.L.R. 33. In connection with the above general statement the position of "true owners" in burghs, as set forth in section 7, must be kept in view. As to subjects in course of building or in course of renewal after a fire

see section 13, footnote (*e*). The confirmation of a trustee under sequestration in bankruptcy, or the granting of a disposition *omnium bonorum* under cessio, or the acceptance of office by a trustee under a private trust-deed, interrupts the owner's possession and causes disqualification, but this result does not follow from the preliminary steps falling to be taken in these various cases (*e.g.*, a grant of sequestration which was recalled before a trustee was appointed),—*Lennox* v. *Donaldson*, 1878, 6 R. 8, 16 S.L.R. 17. A discharge upon composition reinvests the bankrupt in his estate, but to entitle him to be registered the discharge must be dated prior to the commencement of the qualifying period,—*Yuille* v. *Donaldson*, 1865, 4 M. 136, 1 S.L.R. 50. A discharge without composition does not operate reinvestiture,—*Buchanan* v. *M'Culloch*, 1865, 4 M. 135, 1 S.L.R. 50. There are exceptions from the above general rule of disqualification following upon bankruptcy in the case of "conventional liferenters" (see section 9 (I.), *supra*), where the liferent has been declared alimentary; and "legal liferenters" (see section 9 (II.), *supra*), who have no right, *jure mariti* or otherwise, to the rents of their wife's property,—*Marshall* v. *M'Culloch*, 1865, 4 M. 133, 1 S.L.R. 50; *Buchanan* v. *M'Culloch*, quoted *supra*; and also in the case of "official liferenters" (see section 9 (III.), *supra*), who are in this peculiar position, that the possession of the dwelling-house attached to their office is not assignable or attachable for debt. By retirement from office an official liferenter, even though still in occupation of such dwelling-house, ceases to possess it as owner and is disqualified,—*Paton* v. *Morison*, 1871, 10 M. 1, 9 S.L.R. 8; *Home* v. *Paterson*, 1872, 11 M. 1, 10 S.L.R. 15.

17. *Residence.*—In *counties* there is no restriction placed upon the residence of an owner, but in *burghs* it is necessary that an owner (in order to be qualified) should reside within the burgh (in which the qualifying subjects are situated), or within seven miles of some part of it, for six months next previous to the 31st July of the year in which he claims (*a*). Such residence must be (1) personal (*b*); (2) continuous (*c*); and (3) must endure to date of the Registration Court (*d*). The distance of seven miles must be measured from the *house* in which the claimant resides, and it is sufficient if the distance from there to the nearest point in the burgh boundary, "as measured in a straight line on the horizontal plane," does not exceed seven miles (*e*). Where a burgh is divided into divisions, such divisions are "deemed to form the same parliamentary burgh" for the purpose of determining the distance of the claimant's residence (*f*).

(*a*) Reform Act 1832 (2 and 3 Will. IV. c. 65), section 11. This applies to all classes of owners in burghs.

(*b*) Personal residence excludes the occupation of the dwelling-house by a tenant or other persons not being the family or servants of the claimant, but apart from this the residence may be constructive throughout the whole of the necessary period, provided that the claimant has the liberty of returning and also the intention of returning whenever he pleases. Thus absence on pleasure or on account

of health does not destroy the residence, but absence for practically the whole period rendered necessary by the nature of the claimant's employment (*e.g.*, a soldier, a sailor, or a Sheriff-Substitute bound to reside in his own county), or caused by imprisonment, prevents the condition as to residence being complied with,—*Stewart* v. *Doull*, 1868, 7 M. 330, 6 S.L.R. 45 ; *Smith* v. *Falconer*, 1890, 18 R. 343, 28 S.L.R. 166. Constructive residence in a house occupied by the claimant's family is precluded if he has a somewhat permanent residence elsewhere, in connection with his business or otherwise,— *Kennard* v. *Allan*, 1879, 7 R. 1, 17 S.L.R. 165 ; *Stewart* v. *M'Fadzean*, 1890, 18 R. 349, 28 S.L.R. 196 ; *Rintoul* v. *Falconer*, 1898, 1 F. 207, 36 S.L.R. 185 ; *Millar* v. *Bruce*, 1899, 2 F. 265.

(*c*) While residence must be continuous, it need not be absolutely uninterrupted, and disqualification is not caused by the mere *temporary* absence of the claimant for part of the requisite period on pleasure or on account of health, in pursuit of his business or ordinary calling (*e.g.*, a Member of Parliament, commercial traveller, or jobbing tradesman), or in search of work, or through any other necessary cause (*e.g.*, a short term of imprisonment, or on militia training), provided that the claimant retains exclusive right to the dwelling-house and intends to return to it as soon as he can conveniently do so,—*M'Kendrick* v. *Buchanan*, 1886, 20 L.R. Ir. 206 ; *Watt* v. *M'Guire*, 1888, 16 R. 263, 26 S.L.R. 182 ; *Falconer* v. *Dunlop*, 1890, 18 R. 342, 28 S.L.R. 168 ; *Sim* v. *Galt*, 1892, 20 R. 84, 30 S.L.R. 75 ; *Malcolm* v. *Browne*, 1894, 22 R. 188, 32 S.L.R. 150 ; *Parish Council of Kilmarnock* v. *Parish Council of Leith*, 1898, 1 F. 103 ; *Rex* v. *Mitchell*, 10 East. 511 ; *O'Connell* v. *Holland*, 1900, 2 Ir.R. 448 ; see also *Stewart* v. *Doull* and *Smith* v. *Falconer*, quoted in footnote (*b*), *supra ;* but absences which are compulsory in respect of engagements undertaken by the claimant of his own free will, as in the case of a soldier or a sailor, appear to be in a different position and to disqualify,— *Ford* v. *Hart*, 1873, L.R. 9 C.P. 273 ; *Ford* v. *Barnes, &c.*, 1885, L.R. 16 Q.B. 254 ; *Spittal* v. *Brooke*, 1886, L.R. 18 Q.B. 426 ; although (from the opinions of some of the Judges in *Watt* v. *M'Guire*, quoted *supra*) it is not absolutely certain that the principles laid down in these cases would be adopted in the Scotch Courts. If, however, the claimant has a somewhat permanent residence elsewhere in which he lives during his temporary absences, such absences would seem to disqualify,—*Kennard* v. *Allan* ; *Stewart* v. *M'Fadzean ; Rintoul* v. *Falconer* ; and *Millar* v. *Bruce*, quoted in footnote (*b*), *supra*. The Electoral Disabilities Removal Act, 1891 (54 and 55 Vict. c. 11), provides that "a person shall not be disqualified from being registered . . . . in respect of his occupation of any land or tenement . . . . by reason only that during part of the qualifying period, not exceeding four months at any one time, ... he has not resided in or within the required distance from such burgh, provided that the absence has been in performance of duty"; but it is doubtful if this Act applies to owners except those from whom alone actual occupation is required.—See section 16, footnote (*c*).

(*d*) Nicholson, p. 114 ; Cay, p. 466.

(*e*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 34.

(*f*) Redistribution of Seats Act, 1885 (48 and 49 Vict. c. 23), section 13 (3).

Chapter II

AS TO TENANCY QUALIFICATION

I. Persons.

18. In both *counties* and *burghs*, under the Reform Act of 1884 (*a*), the tenancy franchise consists of the actual personal occupation (*b*) of qualifying subjects (*c*) of the annual value (*d*) of £10 (*e*). This is the principal tenancy franchise in counties, and the sole tenancy franchise in burghs; but in counties there is a further franchise under the Reform Act of 1832 (*f*) in favour of tenants (whether in personal occupation or not) (*g*) of qualifying subjects (*c*) of the annual value (*d*) of £10, either for life, or for not less than fifty-seven years (exclusive of breaks) (*h*), or for not less than nineteen years where the annual value (*d*) is not less than £50. Under both Acts the parties must have possessed (*b*) the subjects continuously for the period of twelve months previous to the 31st July of the year in which they claim (*i*), and must still be in possession at the date of the Registration Court (*j*); and the same rule applies to the previous endurance and continuance of the title (*k*) to and value (*d*) of the qualifying subjects. There is an exception to the above rule in *counties* in favour of persons who have acquired the qualifying subjects by succession (whether testate or intestate) during the above-mentioned period of twelve months, they being entitled to be registered as tenants if they have acquired the subjects prior to 31st July and continue in possession till the Registration Court (*l*). There is no restriction placed on residence in *counties*; but in *burghs* it is necessary that the tenant reside in the burgh, or within the seven miles radius thereof, for six months previous to the said 31st July, and this residence should continue until the Registration Court (*m*). Persons so entitled to be enrolled must be free from any disqualification (*n*).

(*a*) Reform Act 1884 (48 and 49 Vict. c. 3), sections 5, 7 (6), and 12; and Reform Act 1868 (31 and 32 Vict. c. 48), section 6 (in counties), and Reform Act 1832 (2 and 3 Will. IV. c. 65), section 11 (in burghs).

(*b*) See section 24, *infra*.

(*c*) See section 21, *infra*.

(*d*) See section 22, *infra*, where the different meaning of the word "value" as used in the Acts 1832 and 1884 is explained.

(*e*) Except in the case of joint tenants in counties, who must each have a qualification of £14.—See section 20, *infra*.

(*f*) Reform Act 1832, section 9. In virtue of the saving clause of the Reform Act of 1884 (section 10) all persons who were registered at the date of its passing (6th December 1884—that is, who were on the voters roll of 1884-85) as tenants under the Reform Act of 1832 in respect of "the actual personal occupancy of any such (heritable) subjects where the yearly rent is not less than £50, or where the tenant, whatever the rent may be, has truly paid for his interest in such subject a price, grassum, or consideration of not less than £300," are still entitled "to be from time to time registered and to vote . . . in respect of such qualification, in like manner as if this Act (of 1884) had not passed," but, subject to this proviso, all such qualifications are repealed by section 12 of the Act of 1884. The chief, if not the only, effect of this is that the persons whose rights are so reserved are *not* disqualified by exemption from or non-payment of poor rates.—See section 31, *infra*.

(*g*) There is an exception to the above rule in the case of assignees to an original lease, or subtenants under a sublease, for fifty-seven or nineteen years, who require to be in personal occupation in order to be qualified as tenants.—Reform Act 1832, section 9; but see next footnote.

(*h*) Tenants under leases for fifty-seven years and upwards are also qualified as owners, and this likewise applies to assignees of subtenants under such leases, who, under the ownership franchise, are not bound to be in actual occupation.—See section 8, footnote (*e*).

(*i*) See footnotes (*a*) and (*f*), *supra*, and statutes there referred to. A tenancy commencing on 1st August does not qualify.—*Waddell* v. *M'Phail*, 1865, 4 M. 130, 1 S.L.R. 50.

(*j*) *Donaldson* v. *Cree*, 1868, 7 M. 330; *Smith* v. *MacDonald*, 1886, 14 R. 125, 24 S.L.R. 83. This point is fully dealt with in sections 6, footnote (*f*), and 7, footnote (*g*), and reference is made thereto, subject to the explanation that the phraseology of section 6 of the Reform Act of 1868 in this connection is similar to that used in section 5 of said Act, and referred to in the first-mentioned footnote.

(*k*) See section 23, *infra*.

(*l*) Reform Act 1832, section 9 (the reference in this section to acquisition by "marriage" and "marriage settlement" seems inapplicable to the case of tenants.—See section 19, footnote (*d*)),—*Stalker* v. *Young*, 1885, 13 R. 77, 23 S.L.R. 52; see also section 6, footnote (*j*).

(*m*) Reform Act 1832, section 11; section 17, *supra*, and footnotes.

(*n*) See sections 30 and 31, *infra*, as to disqualifications.

19. A tenant is a person who has right under a lease or other contract of location (*a*), to the temporary possession of lands, tenements, or other heritable subjects in consideration of a certain periodical return in money, produce, or services

payable by him to the landlord. The landlord's right to the subject may be either that of ownership or tenancy, and in the latter case the occupying tenant is called a "subtenant." *Assignees* and *subtenants* are enfranchised as tenants, provided the original tenant has power to assign or sublet, either (expressed or implied) (*b*), in his lease, or by subsequent consent of the landlord (*c*). *Husbands* of female tenants are not enfranchised (*d*). The *beneficiaries* under a trust do not appear entitled to be enrolled as tenants where the lease is in name of the trustees (*e*).

(*a*) See section 23, *infra*.

(*b*) In *rural* subjects power to assign or sublet is excluded unless it is expressed, or unless the lease is for the period of the tenant's life, or is granted by an official liferenter (see section 9 (III.)) for the duration of his office, or is of extraordinary duration (*e.g.*, for over twenty-one years in the case of agricultural subjects), in which three cases the power to assign or sublet is implied unless expressly excluded; and power to assign or sublet is also implied unless expressly excluded in the case of *urban* subjects, such as houses, business premises, manufactories, &c., whether situated in a county or burgh. A power to sublet does not imply a power to assign, nor does a power to assign imply a power to sublet.

(*c*) The landlord's consent may be implied from facts and circumstances, such as from his recognising or transacting with the assignee or subtenant. In order to qualify, the landlord's consent must have been given expressly or by implication before the commencement of the statutory period.

(*d*) *M'Queen* v. *Dunn*, 1874, 2 R. 3, 12 S.L.R. 32. A husband may, however, be enrolled as tenant of his wife,—*Pearce* v. *Merriman*, 1904, L.R. 1 K.B. 80.

(*e*) *Gairns* v. *Blackwood*, 1882, 10 R. 1, 20 S.L.R. 116.

20. *Joint Tenants.*—In *burghs* there is no restriction as to the number of joint tenants who may be qualified upon the same subjects (*a*); and the same rule holds in *counties* as regards joint tenants qualified under the Reform Act of 1832 (*b*), with exception of those holding under leases of fifty-seven years and upwards, of whom only one is entitled to be registered (*c*). In the case of joint tenants in *counties* qualified under the Reform Act of 1884 (*d*), two (and no more) of such tenants are entitled to be registered upon the same subjects, unless they have acquired these by succession, (whether testate or intestate), or are partners in the joint occupation thereof for the purposes of trade, in which cases there is no restriction as to the number (*d*). The qualifying value for joint tenants is the same as that for sole tenants (*e*),

except in the case of tenants in *counties* under the Reform Act of 1884, in which case the individual interest in the subjects of each joint tenant must be of the value of £14 (*f*).

(*a*) Reform Act 1884 (48 and 49 Vict. c. 3), sections 5 and 7 (7); Reform Act 1832 (2 and 3 Will. IV. c. 65), sections 11 and 12.

(*b*) Reform Act 1832, section 9.

(*c*) Reform Act 1884, section 4 (2): the restriction contained herein is held to apply to such tenants in respect they are qualified as owners,—*Cunninghame* v. *Grossart*, 1886, 14 R. 121, 24 S.L.R. 84. It does not, however, apply to other classes of tenants,—*M'Kenzie* v. *Wilson*, 1894, 32 S.L.R. 149.

(*d*) Reform Act 1884, sections 5 and 7 (6); Reform Act 1868 (31 and 32 Vict. c. 48), section 14. It was formerly held that joint tenants of a farm are for the purposes of the franchise held to be partners carrying on a trade,—*Semple* v. *M'Kirdy*, 1868, 7 M. 317; but this seems at variance with the Partnership Act, 1890 (53 and 54 Vict. c. 39), section 2, which declares that joint tenancy does not of itself create a partnership.

(*e*) See sections 18 and 22. In *burghs* (even where the interests of the joint tenants are unequal) the yearly value of the whole subjects must be £20 and upwards.—Reform Act 1832, section 12. Where the joint tenants are copartners it seems incompetent to inquire into their rights and interests *inter se*, and they are qualified if the total value divided by the number of partners gives a sufficient interest to each,—*Blackwood* v. *Thorburn*, 1868, 7 M. 318; *Blair* v. *Torrance*, 1868, 7 M. 319; *Donaldson* v. *Arrol*, 1879, 7 R. 8, 17 S.L.R. 159.

(*f*) *Wainwright* v. *Aitken*, 1893, 21 R. 162, 31 S.L.R. 126.

II. Subjects.

21. *Character and Locality.*—In *counties* and *burghs* the qualifying subjects under the Reform Act of 1884 (*a*) are "any land or tenement," and in counties under the Reform Act of 1832 (*a*) are "lands, houses, or other heritable subjects." The qualifying subjects may consist of separate premises held simultaneously (*b*) in the same character (*c*), either in virtue of one or more leases (*d*), or under the same or different landlords; or they may consist of separate premises so held successively (*e*) in the same character (*c*), except in the case of tenants in *counties* under the Reform Act of 1832, of whom only those who are in actual occupation of subjects of the annual value of £50 are qualified by successive occupancy (*e*). The subjects must also be wholly situated (*f*) in the county or division of the county, or in the burgh or division of the burgh, in which their owner claims a right to vote, but there is an exception to this rule in favour of subjects held successively which are situated in different divisions of the same parliamentary burgh, or in

different burghs forming part of a district of burghs, which subjects afford a qualification in the division or burgh in which the subjects last in occupation are situated (*g*).

(*a*) Reform Act 1884 (48 and 49 Vict. c. 3), sections 5 and 11 ; Reform Act 1832 (2 and 3 Will. IV. c. 65), section 9. The effect of the expressions used in these Acts is fully discussed in section 11, *supra*, footnotes (*a*), (*d*), and (*f*), to which reference is made. Shortly stated, the result is, that in both counties and burghs subjects which do appear, or which ought to appear, in the valuation roll afford a tenancy qualification ; except that teinds (which do not enter the valuation roll) afford a qualification to tenants in counties under the Reform Act of 1832. The right to retain the arable land on a farm (from which the tenant's principal term of removal is Whitsunday) until the separation of the crop in autumn following does not afford a qualification,—*Miller* v. *Robertson*, 1878, 6 R. 15, 16 S.L.R. 82. By the Reform Act 1868 (31 and 32 Vict. c. 48), section 59, it is provided that a "dwelling-house" shall include "any part of a house occupied as a separate dwelling, and (in any parish in which poor-rates are levied) the occupier of which is separately rated to the relief of the poor either in respect thereof or as an inhabitant of such parish," and this still applies to tenants in *counties* qualified under the Reform Act of 1884, as the substituted definition contained in section 7 (4) of the last-mentioned Act applies only to the household qualification. A separate rating is (or at least was formerly) absolutely necessary, and an erroneous omission from the valuation roll disqualified,—*Forbes* v. *Gordon*, 1868, 7 M. 320, 6 S.L.R. 35 ; *Mitchell* v. *Arthur*, 1868, 7 M. 322, 6 S.L.R. 31 ; *Sproule* v. *Alison*, 1874, 12 S.L.R. 36 ; *Adair* v. *Murray*, 1874, 2 R. 11, 12 S.L.R. 38 ; *Cannon* v. *M'Keand*, 1879, 7 R. 41, 17 S.L.R. 176. These cases were, however, all decided before the Burgh Voters Registration Act of 1856 was made applicable to burghs (see section 13, footnote (*f*)), but it is thought that that Act does not modify the special terms above quoted of section 59 of the Reform Act of 1868. The point is, however, comparatively unimportant, as the tenant occupier of a part of house would be qualified as a householder. It is further enacted by the Reform Act 1884, section 11, that "any part of a house separately occupied for the purpose of any trade, business, or profession" affords a qualification under that Act in both *counties* and *burghs*, provided it is of sufficient value.

(*b*) See section 12, footnote (*c*).

(*c*) While the subjects forming a combined qualification must be held in substantially the same character, absolute similarity is not insisted on. Thus joint tenancy may be combined with sole tenancy, and this combination is competent whether the subjects are held simultaneously or successively,—*Blackwood* v. *Moffat*, 1870, 9 M. 7, 8 S.L.R. 9 ; *Hilson* v. *Laidlaw*, 1870, 9 M. 12, 9 S.L.R. 39 ; *Dunbar* v. *Rule*, 1883, 11 R. 167, 21 S.L.R. 125 ; but where the subjects are held successively those subjects occupied in joint tenancy must be sufficient to afford a qualification in this capacity, as to which see section 20, *supra*, —*Stewart* v. *Scouller*, 1869, 8 M. 11, 7 S.L.R. 83. It is also competent to combine ordinary tenancy with tenancy under a long lease, provided that the tenant is in actual occupation of the subjects in both cases,—*Kirk* v. *M'Gowan*, 1870, 9 M. 11, 8 S.L.R. 41 ; *Murray* v. *Donnan*, 1882, 10 R. 13, 20 S.L.R. 203. These decisions relate to subjects held successively, but the principle laid down seems equally applicable to subjects held simultaneously.

(*d*) *Dick* v. *Waddell*, 1865, 4 M. 127, 1 S.L.R. 50.

(*e*) Reform Act 1868, section 13 (in counties); Reform Act 1832, section 12 (in burghs). Successive occupancy of different subjects afforded a qualification in counties for the first time under the Reform Act of 1868, and was thereby extended only to the £50 tenancy qualification in counties under the Reform Act of 1832. In all cases actual occupancy of the subjects is required for a qualification in respect of subjects held successively,—*Learmont* v. *Young*, 1875, 3 R. 5, 13 S.L.R. 34.

(*f*) See section 12, footnotes (*a*) and (*b*).

(*g*) Redistribution of Seats Act, 1885 (48 and 49 Vict. c. 23), section 10,—*Duncan* v. *Galt*, 1884, 22 R. 190, 32 S.L.R. 151.

22. *Value.*—The statutory value (*a*) must consist entirely of clear yearly value, which in *counties* under the Reform Act of 1832 (*b*) is the surplus value to the tenant, taking one year with another, after paying "rent and any other consideration" due by the tenant for his right, and *in all other cases* (whether in *counties* or *burghs*) is the annual value "as appearing in the valuation roll" (*c*); in other words, the return payable to the landlord is taken as the measure of the value of the tenant's interest, except in the case of tenants in counties qualified under the Act of 1832, when the excess after deduction of that return is held to be the value of such interest. Where the whole subjects can be sublet without disqualification (*d*), the value of the principal tenant's interest is the difference between the subrent and the chief rent (*e*); in the case of a partial sublet, the value of the subject left in possession of the principal tenant is determined by deducting from the total chief rent the proportion of such chief rent effeiring to the portion sublet (*f*), and in no case does a partial sublet disqualify where sufficient value is so left to the principal tenant. In every case the value must endure for the qualifying period, and must continue to the date of the Registration Court. (*g*)

(*a*) See sections 18 and 20, *supra*.

(*b*) Reform Act, 1832 (2 and 3 Will. IV. c. 65), section 9. Under this section provision is made for estimating the value of rent payable in whole or in part in grain, or in any other species of produce, and the value so fixed is declared to be held as settled for the whole period of the lease, but it is doubtful if this provision is now applicable.

(*c*) Reform Act 1884 (48 and 49 Vict. c. 3), sections 5 and 11. See section 13, footnotes (*a*), (*d*), and (*f*). The value of improvements made by a tenant on the subjects, if appearing in the valuation roll in addition to the stipulated rent, afford a qualification,—*Ferguson* v. *Kerr*, 1879, 7 R. 7.

(*d*) That is, in the case of original tenants in counties under the Reform Act 1832.

(*e*) *M'Clure* v. *Crawford*, 1868, 7 M. 326.

(*f*) *Reid* v. *Matheson*, 1869, 8 M. 14, 7 S.L.R. 87; *Donaldson* v. *M'Farlane*, 1869, 8 M. 22, 7 S.L.R. 88. Where the tenant of a park takes in the cows of third parties to graze this is not regarded as a sublet,—*Thomas* v. *M'Naughton*, 1890, 9 M. 10, 8 S.L.R. 29.

(*g*) See section 18, footnote (*j*); also section 13, footnote (*e*).

III. Title.

23. The formal expression of a contract of location is called a lease, and this is the tenant's title to possession of the subjects let. In the case of tenants in *counties* qualified under the Reform Act of 1832 (*a*) the title must be proved *scripto* either by "a lease or leases, missive of lease, or other written title" (*b*); but in the case of tenants under the Reform Act of 1884 (*a*) (whether in *counties* or *burghs*), the proof of title is "at large" (*c*). The title must in every case have endured for the statutory period, and must continue to the date of the Registration Court (*d*), and it must be reasonably indefeasible (*e*) and not merely nominal or fictitious (*f*).

(*a*) See section 18, *supra*.

(*b*) Reform Act 1832 (2 and 3 Will. IV. c. 65), section 9. There must be written evidence as to the foundation of the tenant's right, and mere rent receipts or entries in the landlord's rental roll, neither of which specify the endurance of the tenancy, are not sufficient,—*Craig* v. *Bell*, 1871, 10 M. 8, 9 S.L.R. 11. All such written evidence must duly comply with the requirements of the Stamp Laws,—*Tait* v. *Haldane*, 1865, 3 M. 416; *Miller* v. *M'Curragh*, 1878, 6 R. 10; 16 S.L.R. 75. In this connection it must be kept in mind that a missive of lease is strictly liable in the full stamp duty as if it were an actual lease, and that any lease made subsequently to and in conformity therewith is only liable in a 6d. agreement stamp.—Stamp Act, 1891 (54 and 55 Vict. c. 39), section 75. At same time, on the authority of the case of *Blackwood* v. *Ruickbie*, 1881, 9 R. 8, 19 S.L.R. 76, it would seem competent to refer to an unstamped missive, to substantiate the endurance of the tenancy, if it has been timeously followed by a properly stamped lease. —See section 14 and footnotes thereto.

(*c*) *Rutherford* v. *Laidlaw*, 1863, 2 M. 174; *Stewart* v. *Grant*, 1868, 7 M. 311, 6 S.L.R. 48; *Campbell* v. *Marshall*, 1868, 7 M. 351; *Livingstone* v. *Hamilton*, 1873, 11 S.L.R. 34; *Crawford* v. *Johnston*, 1879, 7 R. 3, 17 S.L.R. 164; *Skeete* v. *Allan*, 1879, 7 R. 15. If, however, a written title exists it must be produced, and the tenancy cannot in this case be proved by parole,—*Russell*, 1863, 1 M. 306 and 312; *Donaldson* v. *Colquhoun*, 1865, 1 S.L.R. 49; *Rea* v. *Thomas*, 1870, 9 M. 8, 8 S.L.R. 22; *Mackenzie* v. *Fraser*, 1890, 28 S.L.R. 169. An objection to the title of the author (granter of the lease) will not be lightly permitted,—*Stewart* v. *Phimister*, 1868, 7 M. 313, 6 S.L.R. 50; *Douglas* v. *Adair*, 1874, 2 R. 10, 12 S.L.R. 38; but it has been allowed in the case of a lease granted by an heir of entail, which would be defeasible by succeeding heirs,—*Melville* v. *Rutherford*, 1863, 2 M. 179; *King* v. *Mitchell*,

1870, 9 M. 15, 8 S.L.R. 27. In the case of tenants in counties who were formerly qualified under the Reform Act of 1832, and whose rights are still reserved (see section 18, footnote (*f*)), their tenancy may also be instructed by a proof at large.

(*d*) See section 18, footnote (*j*); also section 13, footnote (*e*). Where the claimant is an assignee or subtenant, the original tenant must either have power to assign or sublet (see section 19, footnote (*b*)), or the landlord's consent (express or implied) must have been obtained before the commencement of the statutory period,—*Andrew* v. *Smith*, 1868, 7 M. 312; *Young* v. *Newbigging*, 1873, 1 R. 1, 11 S.L.R. 30.

(*e*) *Darnley* v. *Stewart*, 1868, 7 M. 313; *Rutherford* v. *Dunn*, 1872, 11 M. 4, 10 S.L.R. 14; *Brown* v. *Smith*, 1873, 1 R. 5. Persons holding a house in connection with their official position or employment, which is terminable at the will of their employers, and who are bound at once to remove from the premises on the termination of their employment, are not qualified as tenants on account of the defeasibility of their tenure, *e.g.*, bank agents, factors, stationmasters, farm overseers, &c. Such persons are, however, now qualified under the "service franchise" (see section 28, *infra*), but the decisions relating to them as tenants may still be referred to on the general question of defeasibility, and they are accordingly noted,—*Walls* v. *Spence*, 1868, 7 M. 288, 6 S.L.R. 33; *Rose* v. *Grant*, 1868, 7 M. 309, 6 S.L.R. 37; *Forbes* v. *Webster*, 1868, 7 M. 310, 6 S.L.R. 41; *Dalgleish* v. *Andrews*, 1868, 7 M. 310; *Deans* v. *Blackwood*, 1869, 8 M. 1, 7 S.L.R. 15; *Murray* v. *M'Gowan*, 1869, 8 M. 4, 7 S.L.R. 78; *Hilson* v. *Otto*, 1870, 9 M. 8, 8 S.L.R. 35; and *Stewart* v. *Adair*, 1879, 7 R. 39, 17 S.L.R. 179; but see also *Hector* v. *Martin*, 1866, 5 M. 68, 3 S.L.R. 66; *Hilson* v. *Weaver*, 1870, 8 S.L.R. 38; and *Hilson* v. *Scott*, 1870, 9 M. 14, 8 S.L.R. 28; in each of which three last-mentioned cases it was held that the tenure was not defeasible in respect of the employment being of a somewhat permanent character. The above are, of course, to be distinguished from persons possessing premises in connection with an office held *ad vitam aut culpam*; their tenure is practically indefeasible, and, as already explained (section 9 (III.), *supra*), they are qualified as owners (official liferenters).

(*f*) *Loudon* v. *Brown*, 1879, 17 S.L.R. 163.

IV. Possession and Residence.

24. Tenants in *counties* under the Reform Act of 1832 (*a*) may be either in civil possession by their subtenants or others or in natural possession of the qualifying subjects (*b*); in all other cases, (*c*) whether in *counties* or *burghs*, the tenant must be in natural possession (actual occupation) of the subjects. In both counties and burghs the possession must have endured for the statutory period, and must continue to the date of the Registration Court (*d*). In the case of tenants in *counties*, under the Reform Act of 1884, actual occupation does not necessarily involve residence on the qualifying subjects (*e*) unless these subjects consist of a dwelling-house, in which case actual occupation involves residence, which, however, may be either actual or constructive, and precludes the

residence there of a subtenant or other persons than the claimant's family and servants (*f*). The same rule applies in *burghs*, with this further proviso, that where the subjects do not consist of a dwelling-house the claimant must reside either in the burgh or within a seven miles radius thereof (*g*).

(*a*) Reform Act 1832 (2 and 3 Will. IV. c. 65), section 9.

(*b*) There is, however, an exception to the above rule in the case of subtenants or assignees "to any sublease for fifty-seven or nineteen years," and they require to be in "actual occupation,"—*Kennedy* v. *Donaldson*, 1865, 4 M. 123, 1 S.L.R. 48. Tenants who were formerly qualified under the Act of 1832, and whose rights are preserved under the saving clause of the Reform Act of 1884, also require to be in actual occupation.—See section 18, *supra*, and footnotes ; also section 16, *supra*, as to "possession" (civil and natural).

(*c*) Reform Act 1884 (48 and 49 Vict. c. 3), sections 5, 7 (6) and (7), and 12 ; Reform Act 1868 (31 and 32 Vict. c. 48), section 6 (in counties) ; and Reform Act 1832, section 11 (in burghs). Occupancy may, however, be constructive, and does not necessarily involve residence ; but where the subjects consist in whole or in part of a dwelling-house, it excludes the residence there of a subtenant or other parties, not being the family or servants of the claimant.—See section 16, *supra*, and cases quoted in footnote (*c*).

(*d*) See section 18, footnote (*i*). The tenant being out of the premises to enable internal fittings and improvements to be made does not disqualify, but it is thought that disqualification would arise if his absence were due to the making of material alterations on the structure of the premises,—*Stewart* v. *Johnston*, 1868, 7 M. 328, 6 S.L.R. 48. If a tenant renounces or assigns his lease he loses his qualification, and the same result follows from subletting either the whole or such portion as reduces the remainder below the qualifying value (as to which see section 22, *supra*), except in the case of (original) tenants in counties under the Reform Act of 1832, from whom actual occupation is not required,—*Donaldson* v. *Graham*, 1865, 4 M. 129 ; *Donaldson* v. *Brodie*, 1868, 7 M. 314 ; *Donaldson* v. *Cree*, 1868, 7 M. 320 ; *Brown* v. *Blackwood*, 1869, 8 M. 8, 7 S.L.R. 20 ; *Kirkwood* v. *M'Callum*, 1874, 2 R. 1, 12 S.L.R. 31 ; *Smith* v. *M'Donald*, 1886, 14 R. 125, 24 S.L.R. 83. Disqualification also arises from subletting for even a part of the statutory period, except in the case of tenants of dwelling-houses in *counties*, who are not disqualified by subletting the subjects "as a furnished house . . . during part of the qualifying period, not exceeding four months in the whole."—The House Occupiers in Counties Disqualification Removal (Scotland) Act, 1880 (43 and 44 Vict. c. 6). There is no similar exception in the case of tenants in *burghs*, but as a general rule they will be enfranchised as householders (see sections 25 and 27, *infra*), where such subletting is not a disqualification. The taking in of lodgers or boarders is not regarded as an actual sublet which disqualifies,—*Blackwood* v. *Lossock*, 1869, 8 M. 2, 7 S.L.R. 16 ; *Thomas* v. *Panton*, 1873, 1 R. 17, 11 S.L.R. 34. The confirmation of a trustee under sequestration, or the granting of a disposition *omnium bonorum* under cessio, or the acceptance of office of a trustee under a private trust-deed for behoof of creditors, do not disqualify, except under the following circumstances :—(1) Unless there is an express stipulation in the lease irritating it (either absolutely or in the option of the landlord who has exercised such option) on the

occurrence of bankruptcy or a trust-deed; (2) unless there is either power to assign (see section 19, footnotes (*b*) and (*c*)), or the landlord consents to accept the trustee as tenant and the trustee adopts the lease,—*Dobie* v. *Marquis of Lothian*, 1864, 2 M. 788, but where the trustee does not adopt the lease and the tenant remains in possession there is no disqualification,—*Sutherland* v. *Forbes*, 1868, 7 M. 316, 6 S.L.R. 38,—*Halley* v. *Eadie*, 1878, 6 R. 11; or (3) unless the subjects are held by partners as joint tenants for the purposes of trade (see section 20, footnote (*d*)), in which case the transfer of the insolvent partner's interest to the trustees will dissolve the partnership, and thus put an end to the lease,—*M'Gowan* v. *Mather*, 1879, 7 R. 46, 17 S.L.R. 174; *Walker* v. *M'Knight*, 1886, 13 R. 599; the Partnership Act, 1890 (53 and 54 Vict. c. 39), section 32.

(*e*) See section 16, footnote (*b*), and cases quoted.

(*f*) See section 17, footnotes (*b*) and (*e*).

(*g*) Reform Act 1832, section 11. The provision as to residence applies to all tenants in burghs, but as actual occupation of a dwelling-house involves residence, it is evident that the provision is only really operative in the case of other subjects. Non-residence "during part of the qualifying period, not exceeding four months at any one time," does not disqualify, provided that the absence has been "in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by the claimant,—the Electoral Disabilities Amendment Act, 1891 (54 and 55 Vict. c. 11). It is thought that this Act in no way modifies what has been said as to constructive residence and temporary absence in footnotes (*b*) and (*c*) to section 17, *supra*, to which reference is made. No doubt a temporary absence not exceeding four months would fall within its provisions, but it does not follow that a longer temporary absence would disqualify. What the Act of 1891 does is to provide that absolute want of residence during the period and under the conditions therein mentioned does not disqualify, so that a burgh tenant retaining possession of qualifying premises, but giving up his residence or lodgings while absent on duty for not more than four months, would remain qualified.

Chapter III

AS TO HOUSEHOLD AND SERVICE FRANCHISES

I. Household Franchise.

25. *Persons.*—Any person is qualified as a householder (*a*) who has been for twelve months previous to the 31st July of the year in which he claims, and is at the date of the Registration Court, an inhabitant occupier (*b*) as owner or tenant of any dwelling-house (*c*) within a county or burgh (as the case may be). The person so entitled to be enrolled must be free from disqualification (*d*).

(*a*) Reform Act 1884 (48 and 49 Vict. c. 3), section 2, which establishes a uniform household franchise in counties and burghs, and section 7 (4) of which Act provides that "a household qualification" means the qualification enacted by the Reform Act 1868 (31 and 32 Vict. c. 48), section 3, which is extended to counties.

(*b*) See section 27, *infra*.

(*c*) See section 26, *infra*.

(*d*) See sections 30 and 31, *infra*, as to disqualifications.

26. *Subjects.*—The subject *must* consist of a "dwelling-house," which is defined to mean "any house or part of a house occupied as a separate dwelling" (*a*). The qualifying subjects may consist of separate houses occupied in immediate succession (*b*). These separate premises must in the case of *counties* be in the same county or division of a county (*c*), but in the case of *burghs* they may be in different divisions of the same burgh (*d*), or in different burghs forming part of a district of burghs (*e*), in which case they afford a qualification in the division or burgh in which the subjects last in occupation are situated. There is no statutory *value* attached to the qualifying subjects.

(*a*) Reform Act 1884 (48 and 49 Vict. c. 3), section 7 (4). A part of a house in order to afford a qualification must, however, be really occupied as "a separate dwelling;" thus a subtenant of one room in a house of three rooms, who had a key of his own room but no key for the outer door, which was kept by the principal tenant, was held not to be

a householder,—*Bishop* v. *Duffy*, 1894, 22 R. 192, 32 S.L.R. 152. See also *Clarke* v. *Buchanan*, 1886, 20 L.R. Ir. 201 ; *Hoggen* v. *Sterrett*, 1886, 20 L.R. Ir. 344.

(*b*) Reform Act 1868 (31 and 32 Vict. c. 48), section 13. There must be inhabitant occupancy of all the houses so held in succession, as it is incompetent to combine the household franchise with the ownership tenancy or lodger franchises ; it may, however, be combined with the service franchise,—*Farish* v. *Clark* (Monaghan's case), 1855, L.R. Ir. 285 ; *Falconer* v. *Lessels*, 1890, 28 S.L.R. 195.

(*c*) Reform Act 1868, sections 13 and 59, which latter section enacts that the word "county" shall include a "division of a county."

(*d*) Redistribution of Seats Act, 1885 (48 and 49 Vict. c. 23), section 10.

(*e*) *Duncan* v. *Galt*, 1894, 22 R. 190, 32 S.L.R. 151.

27. *Title, Possession, &c.*—Reference is made to what has already been stated in regard to the title of owners and tenants (*a*). The possession or inhabitant occupancy involves natural possession (*b*) (actual occupation) of and residence in the qualifying premises, and it must be (1) personal (*c*); (2) continuous for the statutory period of twelve months (*d*); and (3) must endure to the date of the Registration Court (*e*). Further, the possession must be either in the capacity of owner or tenant (*f*), or partly as the one and partly as the other (*g*); and it must be sole occupation, none of the inhabitants being qualified as such where a house is occupied jointly (*h*).

(*a*) See sections 14, 15, and 23, *supra*.

(*b*) See sections 16 and 24, *supra*.

(*c*) See section 17, *supra*, footnote (*b*). It is thought, however, that constructive residence for the whole of the qualifying period would not be admitted in the case of a householder.

(*d*) See section 25, *supra*. While the occupation and residence must be continuous, it need not be absolutely uninterrupted, and reference is made to what is said upon this point in section 17, footnote (*c*). Temporary absences arising voluntarily (on account of health, pleasure, or business), or even arising compulsorily from causes outwith the claimant's control (*e.g.*, imprisonment for four months), do not disqualify,—*M'Kendrick* v. *Buchanan*, 1886, 20 L.R. Ir. 206 ; *Watt* v. *M'Guire*, 1888, 16 R. 263, 26 S.L.R. 182 ; neither does absence or militia training disqualify,—*O'Connell* v. *Holland*, 1900, 2 M.R. 448 ; but disqualification is caused by absences which are compulsory in respect of an engagement undertaken by the claimant of his own free will (as in the case of a soldier),—*Ford* v. *Barnes*, *&c.*, 1885, L.R. 16 Q.B. 254 ; *Spittal* v. *Brooke*, 1886, L.R. 18 Q.B. 426. The principle laid down in these two English decisions seems to have been imported into the law of Scotland, and to have at the same time been considerably modified by the Electoral Disabilities Removal Act, 1891 (54 and 55 Vict. c. 11), which applies to the United Kingdom. That Act bears to have been passed "to remove certain disabilities of persons by reason of absence to be registered as voters," and it provides that a householder

or lodger shall not be disqualified "by reason only that during part of the qualifying period, not exceeding four months at any one time, he has in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him, been absent from his dwelling-house or lodgings." Immunity from disqualification under these circumstances had previously existed in favour of police constables under the Police Disabilities Removal Act, 1887 (50 Vict. c. 9), section 3. Apart from such absences, there must be such actual occupation of and residence in the qualifying premises as to constitute the same the claimant's "dwelling-house" or home, and if he has a somewhat permanent residence elsewhere in which he lives during these absences this will produce disqualification,—*Stewart* v. *M'Fadzean*, 1890, 18 R. 349, 28 S.L.R. 196; *Jamieson* v. *Scott*, 19 Nov. 1895, 3 S.L.T. 271; *Rintoul* v. *Falconer*, 1898, 1 F. 207, 36 S.L.R. 185. A further relief is given to householders (but not to lodgers) by the House Occupiers Disqualification Removal (Scotland) Act, 1878 (41 and 42 Vict. c. 5), which provides that a householder shall not be disqualified "notwithstanding that during a part of the qualifying period, not exceeding four months in the whole, he shall, by letting or otherwise, have permitted the qualifying premises to be occupied as a furnished house by some other person."

(*e*) *Smith* v. *M'Donald*, 1886, 14 R. 125.

(*f*) A person who occupies a dwelling-house neither as owner or tenant, but simply on sufferance, is not qualified,—*Campbell* v. *M'Lachlan*, and *Black* v. *M'Lachlan*, 1898, 1 F. 212, 36 S.L.R. 188. Where a wife is owner of the dwelling-house the husband may occupy the same as her tenant and so be qualified, provided that there is a definite agreement between them,—*Pearce* v. *Merriman*, 1904, L.R. 1 K.B. 80.

(*g*) *Hannah* v. *Dodds*, 1875, 3 R. 7, 13 S.L.R. 34.

(*h*) Reform Act 1868 (31 and 32 Vict. c. 48), section 3,—*Alexander* v. *Butcher*, 1887, 22 L.R. Ir. 458; *Bagley* v. *Butcher*, 1898, L.R. 1 Q.B. 67.

II. Service Franchise.

28. This is a variety of the household franchise (*a*), and under it is enfranchised any person who in virtue of any office, service, or employment (*b*) has been for twelve months prior to 31st July of the year in which he claims, and is at the date of the Registration Court, an occupant (*c*) of any dwelling-house (*d*) which is not inhabited by the person under whom he serves (*e*). As in the case of household franchise proper, successive occupancy of separate premises affords a qualification (*f*), and the joint occupancy of the same premises by several persons does not afford a qualification to any of them (*g*). The person so entitled to be enrolled must be free from disqualification (*h*).

(*a*) Reform Act 1884 (48 and 49 Vict. c. 3), section 3. This section removes the disability which previously existed on the ground of defeasibility of title in the case of any person who occupied a house

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in virtue of their employment (as to which see section 23, footnote (*e*)), and provides that such person shall be deemed "to be an inhabitant occupier of such dwelling-house as a tenant."

(*b*) The employment in virtue of which there is occupation must be actual and not merely fictitious,—*Aitchison* v. *Lothian*, 1890, 18 R. 337, 28 S.L.R. 167.

(*c*) The occupation is in every respect similar to that required from an ordinary householder, and the occupancy must be continuous for the qualifying period. Thus, where a miner who occupied a house in virtue of his employment went out on strike, and his employer obtained decree of ejection against him, he was held to be disqualified although the decree had never been enforced,—*Strachan* v. *Binnie*, 1888, 15 R. 308, 25 S.L.R. 236. See section 27, footnotes (*c*), (*d*), and (*e*).

(*d*) See section 26 and footnote (*a*). Separate bedrooms occupied by a clerk in a hydropathic establishment; by a butler in a tenement of several flats which formed draper's premises, part of which was set aside for the occupation of the employees; by a clergyman in a house belonging to a religious community in which there were two other clergymen and two lay brothers; and by a police constable in barracks in which other constables were also resident, have been held to afford a qualification as dwelling-houses "for the purposes of the service franchise,"—*Ballingall* v. *Menzies*, 1886, 14 R. 127, 24 S.L.R. 81; *Falconer* v. *M'Guffie*, 1891, 19 R. 295, 29 S.L.R. 237; and *Walshe* v. *Annan*, 1892, 20 R. 83, 30 S.L.R. 77; and *Wallace* v. *Borrie and Another*, 1896, 24 R. 376, 34 S.L.R. 326; and separate apartments in barracks occupied by a soldier (whether an officer or private), also afford a qualification,—*Gay* v. *M'Gill*, 1887, 15 R. 90, 25 S.L.R. 85; but a cubicle in police barracks is not a separate dwelling, and does not afford a qualification,—*Burnett* v. *Hickmott*, 1895, L.R. 1 Q.B. 691; *Clutterbuck* v. *Taylor*, 1896, L.R. 1 Q.B. 395. A gardener who slept in a room over the stables (of which he had the exclusive use), and who had his meals sent there from his master's house, was held qualified,—*Holly* v. *Burke*, 1887, 22 L.R. Ir. 463.

(*e*) To prevent a qualification the person under whom the claimant serves must so reside upon the premises as to retain his quality of master, reserving to himself a general dominion and control over the whole structure,—*M'Laughlan* v. *Chambers*, 1896, 2 Ir. R. 497. Thus the manager of a farm living in a farm-house in which his mother (who was the tenant) also resided; a lay brother in the religious establishment mentioned in the immediately preceding footnote, who performed the duties of a domestic servant, and was bound to obey the orders of the head clergyman; a clergyman resident in a college who in the performance of various religious duties was subject to the orders of the rector, who resided there; and the boots in a hydropathic in which the manager with his wife and family resided, were all (notwithstanding their exclusive occupation of a room) held not qualified on account of the residence of their "master,"—*Philip* v. *Roxburgh*, 1888, 16 R. 261, 26 S.L.R. 181; *Cruize* v. *Annan*, 1892, 20 R. 79, 30 S.L.R. 62; *Michael Monyham*, 1894, 22 R. 195, 32 S.L.R. 154; *Colquhoun* v. *Young*, 1897, 25 R. 101, 35 S.L.R. 110. A coachman who slept and took his meals in his master's house held not to be qualified, although he had the exclusive use of a room over the stables,—*Campbell* v. *Morris*, 1895, 23 R. 118, 33 S.L.R. 121; and probably even though the coachman slept in this room, but took his meals in the master's house, this might not be held to afford a qualification,—*Crossan* v. *Chambers*, 1885, 18 L.R. Ir. 68.

(*f*) See section 26, *supra*, footnotes (*b*), (*c*), (*d*), and (*e*).

(*g*) See section 27, *supra*, footnote (*h*).

(*h*) See sections 30 and 31, *supra*, as to disqualifications.

Chapter IV

AS TO LODGER QUALIFICATION

29. Any person who has occupied "lodgings" (*a*) in the same county or burgh (as the case may be) for twelve months previous to the 31st July of the year in which he claims is enfranchised under this qualification (*b*). The lodgings must be of the clear yearly value, if let unfurnished, of £10 (*c*). Where lodgings are occupied jointly, two (but no more) of such lodgers are entitled to be enrolled provided the total value of the lodgings gives a sum of £10 for each lodger (*d*). The occupation of lodgings involves residence, which must be uninterrupted (*e*) during the qualifying period, but need not continue after 31st July (*f*). The principle of successive occupancy applies (*g*), but the separate lodgings must be in the same county or division of a county, or in the same burgh or division of a burgh (*h*).

(*a*) There is no statutory interpretation of "lodgings," but they may be defined as a room or rooms in a dwelling-house let to a third person or persons for his or their sole and exclusive occupation, accompanied with the provision by the principal occupant of the house of cooking and attendance. Very usually the principal occupant gives the lodger the use of his furniture in the rooms, and also provides fire and light. A son living in his parent's house is qualified as a lodger provided he occupies and pays rent in money or money's worth for rooms of which he has the exclusive use to the requisite value, and the contract for lodgings is quite clear and distinct, and not defeasible at the will of the parent,—*Brown* v. *Martins*, 1885, 13 R. 159, 23 S.L.R. 109 ; *Macdonald* v. *Dickson*, 1888, 16 R. 143, 26 S.L.R. 102 ; *Gray* v. *Deuchar*, 1890, 18 R. 341, 28 S.L.R. 168. A man cannot be enrolled as a lodger in a house tenanted by his wife, even though he pays her rent,—*Campbell* v. *Rankine*, 1894, 2 S.L.T. 328.

(*b*) Reform Act 1884 (48 and 49 Vict. c. 3), section 2, which establishes a uniform lodger franchise in counties and burghs, and section 7 (5) of which Act provides that a lodger qualification means the qualification enacted by the Reform Act 1868 (31 and 32 Vict. c. 48) section 4, which is extended to counties.

(*c*) Reform Act 1868, section 4,—*M'Crae* v. *Buchanan*, 1889, 26 L.R.J. 129. The ascertainment of the value of the qualifying premises is a matter solely within the discretion of the Sheriff in his Registration Court, and his decision thereon, being upon a matter of fact, will not be readily interfered with on appeal,—*Kellie* v. *Little*, 1897, 24 R. 379, 34

S.L.R. 329; *Hamilton* v. *Ferguson*, 1898, 25 R. 94, 35 S.L.R. 107; *Daniel Flynn*, 1899, 2 F. 269. The statutory value of £10 must be made up of clear yearly value of the heritable part of the subjects let. It will not, however, simply be fixed at that proportion of the total rent or value of the house which the rooms let bear to the whole, but may very naturally (although not necessarily) be a larger amount, as the hirer is presumably making a profit out of the letting of lodgings. The total value of the subjects in which the lodgings are situated is an element in fixing the qualifying value of the lodgings, but it is not conclusive against a lodger qualification, even though such total value be below £10,—*Kellie* v. *Little*, *Hamilton* v. *Ferguson*, and *Daniel Flynn*, quoted above; *Cochrane* v. *Stevenson*, 1897, 4 S.L.T. 363; *Jenkins* v. *Grocott*, 1904, L.R. 1 K.B. 374. The rent or hire paid is of course a very material element in fixing the value, and in practice a payment by the lodger of 8s. per week (or even slightly less) is usually held to afford a qualification, one-half thereof being regarded as applicable to the use of furniture and for fire, light, cooking, and attendance, and the other half being regarded as the rent of the heritable subjects let. The rule is, however, in no way absolute, and it is open to any claimant or objector in the Registration Court to establish that the value of the heritable part of the subjects forms a larger or smaller proportion of the rent paid. Lodgers must claim each year,—Reform Act 1868, section 4; *Adair* v. *M'Bride*, 1879, 7 R. 38, 17 S.L.R. 177; and the declaration annexed to their claim is *primâ facie* evidence of their qualification.—Registration Amendment (Scotland) Act, 1885 (48 and 49 Vict. c. 16), section 14; but this presumption may be rebutted by contrary evidence as to value,—*Dalgleish* v. *Dodds*, 1894, 22 R. 198, 32 S.L.R. 156, or by proof that the particulars stated in the claim (to which alone the presumption applies) are erroneous,—*Green* v. *Donaldson*, 1901, 4 F. 245.

(*d*) Registration Act, 1885, section 13. A lodger's wife being resident with him does not create a joint occupation of the lodgings, —*Hamilton* v. *Paton*, 1898, 1 F. 208, 36 S.L.R. 186.

(*e*) The occupation and residence required from lodgers is the same as that required from householders, as to which see section 27, footnote (*d*); see also section 17, footnote (*c*), and *Falconer* v. *Dunlop*, 1890, 28 S.L.R. 168; *Malcolm* v. *Browne*, 1894, 22 R. 188, 32 S.L.R. 150; *Miller* v. *Bruce*, 1899, 2 F. 265. The Electoral Disabilities Removal Act, 1891 (54 and 55 Vict. c. 11), applies to lodgers, but the House Occupiers Disqualification Removal (Scotland) Act, 1878 (41 and 42 Vict. c. 5), does not apply to them, in support of which reference is made to the preamble of the latter Act, which recites section 3 of the Reform Act of 1868.—See section 27, footnote (*d*), as to these Acts.

(*f*) This follows from the terms of section 4 of the Reform Act 1868, in which there is no reference to the date of the registration, as there is in sections 3 and 5 of the same Act, as to which see sections 6, footnote (*f*); 7, footnote (*g*); and 18, footnote (*j*).

(*g*) Reform Act 1868 (31 and 32 Vict. c. 48), section 13; the occupation of subjects so held in succession must be *qua* lodger, as it is incompetent to combine the lodger franchise with any of the other franchises,—*Falconer* v. *Lessels*, 1890, 28 S.L.R. 195.

(*h*) The Redistribution of Seats Act, 1885 (48 and 49 Vict. c. 23), section 10 (in which lodgers are excluded from the operation of that section). The successive occupation of lodgings in different burghs forming the same district of burghs does not afford a qualification,—*Brown* v. *Paterson*, and *Napier* v. *Ross*, 1898, 1 F. 205, 36 S.L.R. 184.

Chapter V

AS TO DISQUALIFICATIONS

I. General Disqualifications.

30. The following persons are disqualified from voting or being registered as parliamentary voters, and these disqualifications apply generally to all the parliamentary franchises :—

(*A.*) *Legal* (*a*).—Aliens (*b*), minors (*c*), women (*d*), fatuous or insane persons (*e*), and peers (*f*.)

(*B.*) *Statutory.*—The Sheriff-Principal (within the county or combined counties of which he is Sheriff, including the burghs therein) (*g*); the Sheriff-Substitute, sheriff-clerk, and deputy sheriff-clerk (in counties (*g*)), and the town-clerk and deputy town-clerk (in burghs) (*g*), and assessors (*h*) in counties and burghs respectively. Persons who are convicted of having committed corrupt or illegal practices (*i*) at a parliamentary, municipal, county council, parish council, or school board election are precluded from being registered as electors for a period of seven years in the case of a "corrupt practice" (*j*), and five years in the case of an "illegal practice" (*k*), which periods run in both cases from the date of conviction. A report by an Election Court or Election Commission that a person has been guilty of a corrupt or illegal practice is equivalent to a conviction as regards disqualification (*l*); and the same result follows from a report of an Election Court that a corrupt or illegal practice has been committed by or with the knowledge and consent of a candidate (*m*).

(*a*) The claimant must not be "subject to any legal incapacity."—

Reform Act 1832 (2 and 3 Will. IV. c. 65), sections 7 and 11, and Reform Act 1868 (31 and 32 Vict. c. 48), sections 3, 4, 5, and 6. The expression above quoted is not contained in section 9 of the Reform Act 1832, relating to tenants in counties qualified under that Act, but it seems referable to them by implication.

(*b*) An alien may become entitled to be registered as a voter upon obtaining a certificate of naturalisation under section 7 of the Naturalisation Act 1870 (33 and 34 Vict. c. 14), but the certificate requires to be dated prior to the commencement of the qualifying period applicable to the year in which he claims or is registered.

(*c*) Minority is included under the general term "legal incapacity" in the Reform Act 1832, sections 7 and 11, and is specially mentioned as a disqualification in the Reform Act 1868, sections 3, 4, 5, and 6. It is sufficient, in order to avoid this disqualification, if the voter has come to be of full age at any time prior to the Registration Court,—*Campbell* v. *Richardson*, 1879, 7 R. 32, 17 S.L.R. 169.

(*d*) *Brown* v. *Ingram*, 1868, 7 M. 281 ; 6 S.L.R. 100.

(*e*) These are included under the general term "legal incapacity" mentioned in footnote (*a*), *supra*. The extent of weak-mindedness which disqualifies is a matter for consideration of the Sheriff at the Registration Court.

(*f*) Some doubt seems to have existed in regard to the eldest sons of peers, but they are declared to be entitled to be registered as voters (if otherwise qualified) by section 37 of the Reform Act 1832.

(*g*) Reform Act 1832, section 36, and *Johnstone* v. *M'Muldrow*, 1868, 7 M. 281, 6 S.L.R. 98, which decides that a person holding an office which disqualifies him from voting is not entitled to be put upon the register. An honorary sheriff-substitute is not disqualified,—*Wright* v. *Kellie*, 1898, 1 F. 209, 36 S.L.R. 186.

(*h*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 8, which is made applicable to counties by the Reform Act 1884 (48 and 49 Vict. c. 3), section 8 (6). See also County Voters Registration (Scotland) Act, 1861 (24 and 25 Vict. c. 83), section 13 ; *Haldane* v. *Paton;* 1863, 2 M. 177 ; *Paton* v. *Haldane*, 1865, 3 M. 418 ; and *Johnstone* v. *M'Muldrow*, quoted in footnote (*g*), *supra*.

(*i*) Corrupt Practices Prevention Act, 1883 (46 and 47 Vict. c. 51) ; Elections (Scotland) Corrupt and Illegal Practices Act, 1890 (53 and 54 Vict. c. 55) ; and Corrupt and Illegal Practices Prevention Act, 1895 (58 and 59 Vict. c. 40). It is unnecessary to discuss in detail what are corrupt and illegal practices, as there must be a conviction (or its equivalent—see footnotes (*l*) and (*m*), *infra*) before the matter can be taken notice of by the registration authorities.

(*j*) Corrupt Practices Act, 1883, section 6 (3*a*), and Corrupt and Illegal Practices Act, 1890, section 3.

(*k*) Corrupt Practices Act, 1883, section 10, and Corrupt and Illegal Practices Act, 1890, section 11.

(*l*) Corrupt Practices Act, 1883, section 38 (5) ; Corrupt and Illegal Practices Act, 1890, section 28 (2) ; the period of disqualification runs in this case from the date of the election relative to which the report is made.

(*m*) Corrupt Practices Act, 1883, sections 4 and 11 ; Corrupt and Illegal Practices Act, 1890, sections 4 and 12 ; the period of disqualification runs in these cases from the date of the report. The offences of treating and undue influence (which are "corrupt practices") must, however, have been proved to have been committed *by* the candidate in order to cause disqualification.

II. Special Disqualifications.

31. The following disqualifications only affect certain of the franchises:—

(*A.*) Owners, tenants, and householders (including those qualified under the service franchise) in both *counties* and *burghs* are disqualified by receipt of parochial relief within twelve months previous to the 31st July of the year in which they claim (*a*).

(*B.*) Tenants in *counties* under the Reform Act of 1868, and householders in both *counties* and *burghs*, are also disqualified (*b*) by (1) exemption from payment of poor rates (*c*), on the ground of inability to pay, "at any time" (*d*) during the period of twelve months previous to 31st July of the year in which they claim; and (2) non-payment on or before 20th June in said year of all poor Rates (*e*) payable by them up to 15th May previous (*f*), in respect of the qualifying premises in the case of tenants, and in respect of such premises, or as an inhabitant of any parish in the county or burgh, in the case of householders.

(*C.*) Owners and tenants in *burghs* are further disqualified (*g*) by non-payment on or before 20th July of the year in which they claim of all "assessed taxes" (*h*) for which they are liable in respect of the qualifying premises up to 6th April preceding.

(*a*) Reform Act 1832 (2 and 3 Will. IV. c. 65), section 11, and Reform Act 1868 (31 and 32 Vict. c. 48), sections 3, 6, and 50. The receipt of relief, however small the amount, disqualifies, but the receipt of relief by an idiot living in family with her father does not disqualify him,—*Gilmour* v. *Cannon*, 1873, 1 R. 12, 11 S.L.R. 33; *Douglas* v. *Ballingall*, 1885, 13 R. 78, 23 S.L.R. 51. The receipt of relief between 31st July and the Registration Court does not disqualify for that year,—*Davidson* v. *Cannon*, 1879, 7 R. 41. The receipt of medical relief by the claimant for himself or for any member of his family does not disqualify,—the Medical Relief Disqualification Removal Act, 1885 (48 and 49 Vict. c. 46), sections 2 and 4, in which latter section medical relief is defined as "all medical and surgical attendance, and all matters and things supplied by or on the recommendation of the medical officer having authority to give such attendance and recommendation at the expense of any poor rate." If the relief is partly ordinary and partly

medical, the general character of the relief, and which relief is incidental to the other, seems a matter of fact for decision of the Sheriff at the Registration Court,—*Kirkhouse* v. *Blakeway*, 1902, L.R. 1 K.B. 306.

(*b*) Reform Act 1868, sections 3 and 6.

(*c*) The exemption must be in proper form, as, for instance, on the claimant's own application and if informal it will not disqualify,—*Forbes* v. *Ross*; *Sutherland* v. *Sinclair*; *Sinclair* v. *Harper*; *Sharp* v. *Smith*; 1868, 7 M. 323 and 324; *Nelson*, 1891, 28 S.L.R. 193.

(*d*) Exemption for any part of the year disqualifies,—*Stewart* v. *Barnetson*, 1868, 7 M. 324, 6 S.L.R. 44.

(*e*) There must have been a formal demand upon the claimant for rates legally payable by him before disqualification can arise from non-payment,—*Ross* v. *Gilchrist*, 1868, 7 M. 323, 6 S.L.R. 39; *Mackenzie* v. *King*, 1875, 3 R. 8, 13 S.L.R. 35; *Wilkie* v. *Burns*, 1903, 41 S.L.R. 100. Where both poor and school rates were included in the same demand note, and a partial payment was made, but without appropriation, the claimant was held disqualified,—*Bell* v. *Galt*, 1896, 24 R. 374, 34 S.L.R. 327.

(*f*) It is only the rates for the year ending 15th May (and not prior arrears) the non-payment of which causes disqualification,—*Hewat* v. *Henderson*, 1874, 2 R. 12, 12 S.L.R. 35.

(*g*) Reform Act, 1832, section 11.

(*h*) This now refers solely to Inhabited House Duty imposed by 14 and 15 Vict. c. 36, in lieu of the Window Tax (thereby abolished), which had been leviable under 48 Geo. III. c. 55, and it was provided that the new duty should be levied under the regulations contained in Schedule B of the last-mentioned Act. Under those regulations the duty is payable by the occupier, and therefore the disqualification does not affect an owner unless he is in actual occupation of the qualifying premises. This disqualification does not apply to voters qualified under the Reform Act of 1868,—*Gray* v. *Stewart*, 1868, 7 M. 285, 6 S.L.R. 53

PART SECOND

MUNICIPAL AND LOCAL GOVERNMENT FRANCHISES

I. Municipal Franchise.

32. The Town-Council is elected by the following electorate, viz.:—

I. In the case of Burghs returning or contributing to return a Member of Parliament:—

(*A.*) The persons actually registered as burgh parliamentary voters (*a*) in respect of subjects within the municipal boundary (*b*).

(*B.*) The persons (*h*) otherwise qualified but who are prevented from being so registered in respect that they reside more than seven miles beyond some part of the municipal boundary (*c*).

(*C.*) Where the municipal boundary extends beyond the parliamentary boundary—(1) the persons (*h*) actually registered as county parliamentary voters in respect of subjects situated within that part of the municipal area lying between these two boundaries (*d*); and (2) the persons (*h*) who would have been entitled to be registered as parliamentary voters (either "burgh" or "county," as the case may be), in respect of subjects within the municipal area, but for their removal during the qualifying period from subjects within the parliamentary boundary to subjects outwith the same, or *vice versa* (*e*).

(*D.*) All peers, sheriff-substitutes, sheriff-clerks, and sheriff-clerk deputes, and women (*h*) who own

or occupy premises within the municipal boundary which would afford a qualification for the parliamentary franchise but for the personal disqualification attaching to these persons respectively, (*f*) except that a wife shall not be registered except in respect of any premises upon which her husband is registered (*g*).

II. In the case of all other Burghs (*i*):—

(*A.*) The persons actually registered as county parliamentary voters in respect of subjects within the municipal boundary (*j*).

(*B.*) The persons (*h*) who would have been entitled to be so registered in respect of such subjects, but for the fact that they are already enrolled elsewhere in the county in respect of the county parliamentary franchise. (*k*).

(*C.*) Peers, Sheriff-Substitutes, sheriff-clerks, sheriff-clerks depute, and women (*h*), as above mentioned (*l*).

(*a*) See Part First of Manual.

(*b*) The Town-Councils (Scotland) Act, 1900 (63 and 64 Vict. c. 49), section 23 (1). The "municipal boundary" is declared to be—(1) the existing boundary for municipal purposes in royal burghs, parliamentary burghs, and burghs incorporated by Act of Parliament; (2) the police boundary in the case of other burghs; and (3) to "include any extension of such boundary, and be subject to any contraction thereof effected under any Act,"—section 4 (11) of above Act. These electors are enrolled in the burgh parliamentary register; and where the parliamentary boundary of the burgh entends beyond the municipal boundary a distinctive mark is put in the register against the names of the electors qualified in respect of subjects which (although within the parliamentary boundary) are outwith the municipal boundary, and which electors are therefore not qualified as municipal electors.—Sections 24 and 25 of above Act.

(*c*) Town-Councils Act, 1900, section 23 (2). This removes for municipal purposes the condition of residence applicable to the burgh parliamentary (ownership and tenancy) franchises, as to which see sections 17 and 24, *supra*.

(*d*) Town-Councils Act, 1900, sections 23 (1) and 27.

(*e*) Town-Councils Act, 1900 section 23 (2). As the subjects which afford a parliamentary qualification must be wholly within a county or burgh (as the case may be) according to its parliamentary boundary, a voter who removes in the manner here indicated does not appear on the parliamentary register.

(*f*) Town-Councils Act, 1900, section 23 (3), and the Town-Councils (Scotland) Act, 1903 (3 Edw. VII. c. 34), section 4. These qualifications will be regulated by the conditions of the burgh parliamentary franchise (excepting the condition as to residence) in the case

of burghs returning or contributing to return a Member to Parliament, where the parliamentary boundary coincides with or is beyond the municipal boundary, but where the municipal boundary of such a burgh extends beyond its parliamentary boundary, the conditions of the county parliamentary franchise will apply in the case of qualifying subjects situated in the area lying between these two boundaries; and in the case of a non-parliamentary burgh the conditions of the county parliamentary franchise will be universally applicable. Sheriff-substitutes, sheriff-clerks, and sheriff-clerks depute are not disqualified for the parliamentary franchise in burghs returning or contributing to return a Member to Parliament (see section 30, *supra*), and therefore the exception in their favour contained in the Town-Councils Act, 1903, section 4, is operative only where they are qualified in respect of subjects within the municipal boundary of such burghs, but outwith the parliamentary boundary thereof, and in the case of non-parliamentary burghs.

(*g*) See section 9, *supra*, as to the registration of a husband as a parliamentary voter in respect of subjects belonging to his wife; if he is not so registered, the wife seems the proper person to be registered as a municipal voter. Where the husband is entitled to be registered in respect of subjects belonging to his wife, and it is desired that she should be registered as a municipal voter, this can be accomplished by him sending a request to the assessor not to register him as a parliamentary voter, as provided for in section 2 of the Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 50), which now also applies to counties. Where the spouses occupy subjects belonging to the wife the husband may be registered as tenant for parliamentary and other purposes, and the wife as owner for municipal and local government purposes.—See sections 19, footnote (*d*), and 27, footnote (*f*).

(*h*) These persons are all included in the supplementary list,—Town-Councils Act, 1900, sections 23 (2) and (3), and 27; Town-Councils Act, 1903, section 4.

(*i*) By the Town-Councils Act, 1900, section 4 (3), it is provided that a "burgh" shall include a "royal burgh, parliamentary burgh, burgh incorporated by Act of Parliament, police burgh, and any other burgh within the meaning of the Burgh Police (Scotland) Act, 1892, to which that Act applied from its commencement." By section 4 (13) of the above Act a "police burgh" is declared "to have the meaning assigned to it in the Burgh Police (Scotland) Act, 1892," by section 4 (25) of which latter Act a "police burgh" is declared to mean "a populous place, the boundaries whereof have been fixed under the General Police Acts, or under any Local Police Act, or under this Act."

(*j*) Town-Councils Act, 1900, sections 23 (1) and 26. These electors are enrolled in an "excerpt" from the county parliamentary register.

(*k*) Town-Councils Act, 1903, section 2. Only one enrolment within a county or division of a county is competent for parliamentary purposes, but if this enrolment is in respect of subjects outwith the municipal boundary in the case of a person holding subjects within that boundary such person is entitled to further enrolment for the municipal franchise only in respect of the latter subjects.

(*l*) See footnote (*f*), *supra*. In this case it is the conditions of the county parliamentary franchise that will apply.

II. County Council Franchise.

33. The County Council is elected by the following electorate (*a*), viz.:—

(*A.*) The persons actually registered as county parliamentary voters in respect of subjects within the County Council area (*b*).

(*B.*) Where the parliamentary boundary of a burgh extends beyond the police boundary thereof, the persons (*f*) actually registered as burgh parliamentary voters in respect of subjects situated in that part of the County Council area lying between these two boundaries (*c*).

(*C.*) All peers and women (*f*) who would have been qualified as parliamentary voters but for the personal disqualification attaching to them respectively (*d*), except that a husband and wife, shall not be registered in respect of the same property (*e*).

(*a*) Royal burghs and parliamentary burghs with a population of under 7000 (for the administration of Police and of the Contagious Diseases (Animals) Acts), and royal burghs with a population of over 7000 but not returning or contributing to return a Member to Parliament (for the administration of the Contagious Diseases (Animals) Acts), are represented on the County Council by a councillor elected by the town-council of such burghs.—Local Government (Scotland) Act 1889 (52 and 53 Vict. c. 50), sections 8, 13, 14, and 105. By section 104 of that Act it is provided that "population" is that contained in the census of 1881 or established under the Act.

(*b*) Local Government Act, 1889, section 28 (1). For County Council purposes a "county" means a county exclusive of any royal or parliamentary burgh wholly or partly situate therein, and does not include a county of a city. The boundaries of the burghs so excluded are their police boundary or (where no police assessment is levied) their municipal boundary, and the contents and boundaries of a county are those which it has under the Roads and Bridges (Scotland) Act 1878, and so include police burghs as defined by the Burgh Police (Scotland) Act 1892.—Local Government Act 1889, sections 44 (*a* and *b*) and 105, and the Local Government (Scotland) Act 1894 (57 and 58 Vict. c. 58), section 54. These electors are registered in the county parliamentary register, and where the police boundary of a royal or parliamentary burgh extends beyond its parliamentary boundary a distinctive mark is put on this register against the names of county parliamentary electors qualified in respect of subjects within such police boundary, and who are therefore not qualified as county council electors.—Local Government Act 1889, section 28 (1*c*). Detached portions of another parliamentary county may be combined for County Council purposes with the county with which they are geographically connected, and the parliamentary voters for such detached portions are registered in the county register of the parliamentary county to which they belong, copies of the necessary parts of which register being transmitted by the county clerk of that county to the county clerk of the county with which said portions are combined for county council purposes.—Local Government Act, 1889, sections 28 (4) and 44 (*c*).

(*c*) The Local Government Act, 1889, section 28 (2 *j*).

(*d*) The Local Government Act, 1889, section 28 (2 *h* and *j*), and the Local Government Act, 1894, section 11. The conditions of the county parliamentary franchise apply to these voters, and this holds even though the qualifying subjects are within the Parliamentary boundary of a burgh, which happens only in cases where this boundary extends beyond the police boundary of a burgh.

(*e*) See section 32, footnote (*g*).

(*f*) These persons are included in the supplementary register.—Local Government Act, 1889, section 28 (2).

III. Parish Council Franchise.

34. The Parish Council is elected by the following electorate, viz.:—

(*A.*) The county council electors in each parish (*a*), with the exception of those qualified in respect of subjects situated within a police burgh (*a*).

(*B.*) The municipal electors in any burgh (*a*) or police burgh (*a*), or part thereof, within the parish (*b*).

(*C.*) The persons who are not registered as either county council electors or municipal electors in respect of subjects situated within the parish, but who would have been entitled to be registered in respect of such qualification but for the fact that such registration would cause their double enrolment within either the same county council area or the same municipal area (*c*).

(*a*) The Local Government (Scotland) Act, 1894 (57 and 58 Vict. c. 58), section 12 (1); and sections 33, *supra*, and 53, *infra*. A "parish" means "a parish *quoad civilia*, which is at the passing of this Act, or may hereafter be constituted, a separate parish for the purposes of settlement and relief of the poor, and includes a combination of parishes within the meaning of section 16 of the Poor Law (Scotland) Act, 1845"; a "police burgh" has "the meaning assigned to it in the Burgh Police (Scotland) Act, 1892" (see section 32, footnote (*i*)); a "burgh" means "any royal or parliamentary burgh, and shall include the burgh of Coatbridge;" and the boundaries of burghs are their police boundary or (where no police assessment is levied) their municipal boundary.

(*b*) Local Government Act, 1894, section 12 (2). Where the municipal boundary extends beyond the police boundary, a distinctive mark is placed on the municipal register against the names of electors qualified in respect of subjects outwith such police boundary; these persons are qualified as parish council electors only if their names are on the county council register.—Section 12 (3) of above Act.

(*c*) Local Government Act, 1894, section 12 (4 and 5). These persons are in respect of this franchise enrolled in the supplementary part of the county council register or of the municipal register (as the case may be), irrespective of whether their primary enrolment is in this register or in the parliamentary register.—See sections 51 and 52, *infra*.

IV.—School Board Franchise.

35. Under the Education Acts, 1872 to 1883, a School Board is elected "in and for each and every parish and burgh in accordance with the provisions" of these Acts (*a*), and the electors consist of all persons (male and female) appearing on the current valuation roll as owners and occupiers of lands and heritages of the annual value of not less than £4 (*b*). The School Board is elected triennially (the next of such periods occurring in 1905), and the election is held at such time and in such manner as the Scotch Education Department may prescribe by Order (*c*).

(*a*.) Education (Scotland) Act, 1872 (35 and 36 Vict. c. 62), section 8. The area of a parish is "exclusive of the area of any burgh or part of a burgh situated therein for which a School Board is required to be elected;" a burgh means "any royal burgh, and any burgh or town returning or contributing as a burgh to return a Member to Parliament, and . . . every town, whether a burgh or not, specified in the schedule of towns appended to this Act;" the area of every such burgh shall "be taken to be the limits within which the municipal, or where there are no municipal, then within which the police assessments thereof are levied;" and where two or more parishes or parts of parishes are united, either *quoad omnia* or *quoad sacra*, "such united parishes or parts of parishes shall for the purposes of this Act be esteemed one parish."—Education Act, 1872, sections 1, 9, and 10. Any extension of the municipal or police boundary of a burgh after 1878 does not *per se* affect the School Board area.—Education (Scotland) Act, 1878 (41 and 42 Vict. c. 78), section 30. Certain powers are given to the Scotch Education Department to combine small areas and to create new or extended areas for School Board purposes.—Education Act, 1872, sections 17, 18, and 19; Education Act, 1878, sections 29 and 30; Education (Scotland) Act, 1883 (46 and 47 Vict. c. 56), section 13.

(*b*.) Education Act, 1872, schedule B, section 2. The persons so qualified are owners, tenants, and householders; service franchise householders are also qualified in *counties* (but not in burghs) in respect that the subjects must appear in the valuation roll as of the value of £4, and it is only in counties that any value is placed in that roll against the subjects occupied by such persons (Local Government Act, 1889, section 29). Lodgers are not qualified either in *counties* or *burghs*, as they do not appear in the valuation roll. An elector's name may appear more than once in the valuation roll, but he (or she) may vote only upon one such qualification, and in respect thereof such elector is "entitled to a number of votes equal to the number of the members of School Board to be elected, and may give all such votes to one candidate, or may distribute them among the candidates as he sees fit."—Section 6 of Schedule B of Act of 1872.

(*c*.) Education Act, 1872, Schedule B, section 4; Education Act, 1878, Section 26, and Schedule; and General Order by the Scotch Education Department dated 2nd October 1893, which contains the existing regulations as to elections.

V.—Disqualifications.

36. The disqualifications relative to the Parliamentary franchise (*a*) are equally applicable to the municipal and local government franchises, except that peers and women (*b*) are not disqualified for these minor franchises, and that sheriff-substitutes, sheriff-clerks, and sheriff-clerk deputes (*c*) are not disqualified for the municipal franchise, the parish council franchise so far as founded upon the municipal register, nor the school board franchise. The following further special disqualifications are also applicable to the municipal and local government franchises (other than the school board franchise) in the same manner as and in addition to the disqualification arising from exemption from or failure to make payment of poor-rate in the case of a parliamentary elector (*d*), viz.:—

A. *Municipal Franchise.*—Exemption from or non-payment of any burgh rate disqualifies for this franchise (*e*).

B. *County Council Franchise.*—Exemption from or non-payment of the county consolidated rates disqualifies (*d*) for this franchise (*f*).

C. *Parish Council Franchise.*—Exemption from or non-payment of (1) any burgh rate in the case of voters appearing on the municipal part of the parish council register, and (2) the county consolidated rate in the case of voters appearing on the county council part of that register disqualifies (*d*) for this franchise (*g*); and exemption from or non-payment of any special rate authorised by the Local Government Act of 1894 disqualifies from voting at a parish council election, but does not affect registration (*h*).

(*a*) See sections 30 and 31, *supra;* also the Elections (Scotland) Corrupt and Illegal Practices Act, 1890 (53 and 54 Vict. c. 55) section 29, in terms of which the assessor omits from the subsidiary lists any one convicted of corrupt or illegal practices either under that Act or the Corrupt Practices Act of 1883. The disqualification upon conviction of corrupt or illegal practices also applies to the school board franchise; and by the Education (Scotland) Act, 1872 (35 and 36 Vict. c. 62), Schedule B, section 2, it is provided that electors must be of

lawful age and not subject to any incapacity; but these disqualifications are practically prohibitions against voting, as the names of persons so disqualified remain on the valuation roll. They would, however, be omitted from the certified copy thereof if such be made.—See Section 54, *infra*. The Medical Relief Disqualification Removal Act, 1885 (48 and 49 Vict. c. 46), does not apply to the parish council franchise, and consequently the receipt of such relief disqualifies for this franchise in the same manner as ordinary relief, but it is difficult to see how this disqualification is to be given effect to, as disqualification for municipal and county council purposes is not thereby occasioned, and no provision is made for the insertion in these registers of a distinctive mark for parish council purposes in respect of the receipt of medical relief.

(*b*) Local Government (Scotland) Act, 1889 (52 and 53 Vict. c. 50), section 28 (2 *i*); Local Government (Scotland) Act, 1894 (57 and 58 Vict. c. 58), section 11; and Town Councils (Scotland) Act, 1900 (63 and 64 Vict. c. 49), section 23 (3). A married woman, however, is entitled to be registered only if her husband is not registered in respect of the same premises.—See section 32, footnote (*g*). In respect of the provisions of the Interpretation Act, 1889 (52 and 53 Vict. c. 63), section 1, women are held qualified as voters in School Board elections, and this applies to married women in right of qualifying subjects, as it is their name, and not that of their husband, which appears in the valuation roll in respect of such subjects.

(*c*) Town Councils (Scotland) Act, 1903 (3 Edw. VII. c. 34), section 4.

(*d*) See section 31, *supra*, and footnotes, and the remarks there made as to a formal demand for payment and erroneous or improper exemption, all of which are applicable, *mutatis mutandis*, to the above special disqualifications. These special disqualifications are put upon the same basis as the disqualification arising from exemption from or non-payment of poor-rates, and it is therefore thought that the only persons affected by these disqualifications are *householders* in both counties and burghs and *tenants* in counties under the Reform Act of 1884 (48 and 49 Vict. c. 3).

(*e*) Town Councils Act, 1900, section 28. Persons so disqualified are indicated by a distinctive mark on the various component parts of the municipal register.—See sections 38 and 51, *infra*.

(*f*) Local Government Act, 1889, section 28 (1 (*b*) and (*c*), and 2 (*k*) and (*l*)). Persons so disqualified are indicated by a distinctive mark in the parliamentary part of the county council register, and are not included in the supplementary register.—See sections 37 and 52, *infra*.

(*g*) The parish register is a combination of the county council register and the municipal register, so that the distinctive marks on these registers are effective for parish council purposes.—Local Government Act, 1894, section 12.

(*h*) As no special roll is made up for parish council purposes, this disqualification applies to voting only, and provision is made for the necessary information being in the hands of the returning officer at the time of an election.—Local Government Act, 1894, section 10.

PART THIRD

REGISTRATION OF VOTERS

Chapter I

PARLIAMENTARY REGISTERS

I. Assessor's List.

37. *In Counties.*—In addition to assimilating the county and burgh parliamentary franchises, the Reform Act of 1884 (*a*) also introduced a uniform system of registration, by rendering applicable to counties the system formerly in use in burghs (*b*). The valuation roll is the main foundation of the system, and from that roll, coupled with certain extraneous information (*c*), the assessor for each county or for each division of a county prepares annually on or before 15th September a list of the parliamentary voters in such county or division (as the case may be), which register is arranged in parishes grouped into polling districts (*d*). Where a parish is divided into or forms part of more than one polling district, each district must be shown (*e*), and each burgh or police burgh included in the county for parliamentary purposes is also shown separately. In addition to the above, on the occurrence of every triennial period when the county council register and parish council register fall to be made up (one of which periods occurs in 1904), the following further particulars require to be given, viz.—(1) The electoral divisions for county council purposes, as well as parishes and polling districts (*f*); (2) the parish wards, if and where a landward parish or the landward part of a parish partly landward and partly burghal is divided into parish wards (*g*); (3) where the police boundary of a royal or parliamentary burgh is more extensive than its parliamentary boundary a distinc-

tive mark is placed against the names of the voters qualified in respect of subjects situated in the area lying between these two boundaries as indicating that they are disqualified as county council voters (*h*); and (4) a distinctive mark is also put against the names of voters who are exempted from or have failed to make payment of the county consolidated rate, as indicating that they are disqualified as county council voters (*i*). A voter may be registered in more than one division of a county (*j*). Where any burgh ceased under the scheme of redistribution in 1885 to return or contribute to return a Member to Parliament the register of voters therein continues to be made up separately, but by the county assessor (*k*).

(*a*) Reform Act 1884 (48 and 49 Vict. c. 3), section 8 (6).

(*b*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58) as amended by the Reform Act 1868 (31 and 32 Vict. c. 48). Sections 20 and 21 of the latter Act make considerable alterations upon the various dates fixed by the former Act, and it is to the sections of the Act of 1856 as thus amended that reference is hereinafter made. The Reform Act 1884, section 8 (6) enacts that the Act of 1856 "shall, with the necessary variations, and with the necessary alterations of notices and other forms, extend and apply to counties as well as to burghs," and in order to appreciate the necessary variations it is requisite to refer to the terms of the County Voters Registration (Scotland) Act, 1861 (24 and 25 Vict. c. 83).

(*c*) This consists mainly of personal inquiries by the assessor, the valuation returns, and the returns by the respective collectors of poor rates, burgh rates, and county rates.—Reform Act 1868, section 19 (2); Town Councils (Scotland) Act, 1900 (63 and 64 Vict. c. 49), section 28; and Local Government (Scotland) Act, 1889 (52 and 53 Vict. c. 50), section 28.

(*d*) Burgh Voters Registration Act, 1856, section 2; County Voters Registration Act, 1861, section 8; and Reform Act 1884, section 8 (6).

(*e*) Registration Amendment (Scotland) Act, 1885 (48 and 49 Vict. c. 16), section 7.

(*f*) Local Government (Scotland) Act, 1889 (52 and 53 Vict. c. 50), section 28 (3).

(*g*) Local Government (Scotland) Act, 1894 (57 and 58 Vict. c. 58), sections 12 (1) and 59.

(*h*) Local Government Act, 1889, section 28 (1*c*).—See section 33, footnote (*b*).

(*i*) *Ibid.* section 28 (1*c*).—See section 36, *supra*.

(*j*) Each division of a county is a "parliamentary county."—Redistribution of Seats Act, 1885 (48 and 49 Vict. c. 23), section 34.—See section 50, footnote (*b*), as to registers in divided counties and combined counties.

(*k*) Registration Act, 1885, section 8.

38. *In Burghs.*—The assessor for each burgh in similar

manner prepares annually, on or before 15th September, a list of the parliamentary voters therein, which is arranged in wards (where the burgh is divided into wards) and polling districts (*a*); and there is a distinctive mark put against the names of voters (1) who are qualified in respect of subjects situated outwith the municipal boundary but within the parliamentary boundary (*b*); and (2) who are exempted from or have failed to make payment of any burgh rate (*c*), as indicating in both instances that they are disqualified as municipal voters. Where a burgh is divided for parliamentary purposes, the register shall be arranged in parts so as to correspond to the divisions thereof (*d*), and a voter can be registered for parliamentary purposes in only one of these divisions (*e*). In addition to the above, on the occurrence of every triennial period when the parish council register falls to be made up (one of which periods occurs in 1904), the following further particulars require to be given, viz.—(1) the parishes, if and where a burgh comprises two or more parishes or parts of two or more parishes (*f*); (2) the parish wards, if and where a burghal parish, or the burghal part of a parish partly landward and partly burghal, is divided into parish wards (*g*); and (3) when the parliamentary boundary of a burgh is more extensive than its police boundary a distinctive mark is put against the names of any voters qualified in respect of subjects situated in the area lying between these two boundaries, as indicating that they are not qualified in virtue of this enrolment for parish council purposes (*h*).

(*a*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 2; Town Councils (Scotland) Act, 1900 (63 and 64 Vict. c. 49), sections 20 and 22.

(*b*) Town Councils Act, 1900, section 25.—See section 32, footnote (*b*).

(*c*) Town Councils Act, 1900, section 28.—See section 36, *supra*.

(*d*) Redistribution of Seats Act, 1885 (48 and 49 Vict. c. 23), section 13 (3).—See section 50, footnote (*b*), as to registers in districts of burghs.

(*e*) Redistribution of Seats Act, 1885, sections 8 (3), and 13 (4).

(*f*) Local Government (Scotland) Act, 1894, section 12 (2*a*).

(*g*) Local Government (Scotland) Act, 1894, sections 12 (2*b*) and 59.

(*h*) Local Government Act, 1894, section 12 (3). These voters are qualified for parish council purposes only if they are enrolled in the supplementary part of the county council register.—See sections 33 (B) and 52 (B).

39. *General.*—The voters in each subdivision of the

assessor's list (in a county or burgh, or division of a county or burgh, as the case may be) are arranged either in the alphabetical order of their surnames, or otherwise in the alphabetical order of streets, squares, lanes, and other places in which houses are distinguished by numbers (*a*). The particulars given regarding each voter are his Christian name and surname, place of abode, and occupation, the nature of his qualification, and the name of the street and number of the house (if any), or other description of the place in which the qualifying subjects are situated (*a*). Where a voter is qualified in respect of the ownership or occupation of successive subjects, only the last of these subjects is entered in the assessor's list (*b*); and if a voter intimate to the assessor in writing that he does not desire to have his name put upon such list, the assessor is bound to give effect to this (*a*). These lists lie open for inspection from 16th to 21st September between the hours of 10 A.M. and 4 P.M. on each business day in such place (usually the assessor's office), as shall be intimated by advertisement in one or more local newspapers (*c*); and they are also published on or before 15th September by the assessor for the county, or division of a county, affixing a copy of that part of his list applicable to each parish in the county, or division of a county, to the door of the parish church (*d*), and by the assessor for the burgh affixing a copy of his list on or near the town hall or some other conspicuous place within the burgh (*c*). The assessor for the county or division of a county, or for the burgh (as the case may be), also makes out a separate list of those persons disqualified in respect of corrupt or illegal practices (*e*), and this list is published along with and in the same manner as the lists of voters respectively (*f*).

(*a*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 2.

(*b*) *Adshead* v. *Wright*, 1868, 7 M. 283.

(*c*) Burgh Voters Registration Act, 1856, section 2.—See section 44, *infra*.

(*d*) Burgh Voters Registration Act, 1856, section 2; County Voters Registration (Scotland) Act, 1861 (24 and 25 Vict. c. 83), section 8.—See section 44, *infra*.

(*e*) See section 30, *supra*.

(*f*) Corrupt Practices Prevention Act, 1883 (46 and 47 Vict. c. 51), section 39.

II. Claims and Objections.

40. *Claims.*—Every person whose name is omitted from the assessor's list, and who is entitled to have, and is desirous of having, his name inserted therein, and every person who is desirous of being registered for a different qualification than that for which his name appears in such list, can accomplish his purpose by means of the Registration Courts, and the first step to this end is to give notice of claim to the assessor of the county or division of a county, or of the burgh, as the case may be (*a*). The form of such notice is in terms of No. 2 of Schedule A of the Burgh Voters Registration Act of 1856 (*a*) (subject to the necessary alterations in the case of counties), except in the case of lodgers, who claim in terms of No. 1 of Schedule I of the Reform Act of 1868 (*b*).

(*a*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 3. Any person improperly or erroneously exempted from payment of poor rates, and on this account excluded from the assessor's list, may have the matter rectified by a claim in ordinary form, but in order to succeed he must prove that he has on or before 20th June paid or tendered payment of such poor rates.—Reform Act 1868 (31 and 32 Vict. c. 48), section 17. The erroneous exclusion of a voter from the list of voters on the ground of disqualification in respect of corrupt or illegal practices, and his corresponding inclusion in the corrupt and illegal practices list (see section 39, footnote (*f*)), or otherwise, his erroneous inclusion in the former list, and exclusion from the latter, is dealt with by claim or objection in the ordinary form.—Corrupt Practices Prevention Act, 1883 (46 and 47 Vict. c. 51), section 39 (4).

(*b*) Reform Act 1868, sections 4 and 19 (3). Lodgers must claim each year,—*Adair* v. *M'Bride*, 1879, 7 R. 38, 17 S.L.R. 177; and the claim must be dated on or after 1st August.—Schedule I of Reform Act 1868.

41. Notice of claim must be given to the assessor on or before 21st September (*a*), by delivering the same to him, or leaving it, or sending it by post to him, at his residence or official place of business (*b*); if the 21st be a Sunday, then the following Monday is the last legal day (*c*). Claims must be framed with distinctness and accuracy, because unless the qualification specified is sustained the claim will be rejected (*d*). Where there are several qualifying subjects, whether held simultaneously or successively, they should *all* be specified in the claim (*e*). Claims must be signed either by the claimants themselves, or their agents or man-

datories (*f*), except in the case of lodgers, who must sign their claim personally (*g*).

(*a*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 3. A claim is not timeous if, although posted on or before the last day for lodging claims, it cannot reach the town where the assessor lives until after that day,—*Bruce* v. *Rose*, 1868, 7 M. 286, 6 S.L.R. 41 ; but it is timeous although it reaches such town after the postal deliveries of the day are over, but at an hour when parties calling at the post-office can get their letters,—*Rose* v. *Farquhar*, 1868, 7 M. 286, 6 S.L.R. 37.

(*b*) Burgh Voters Registration Act, 1856, section 9.

(*c*) *Ibid.* section 35.

(*d*) *Robertson* v. *Rutherford*, 1865, 3 M. 417 ; *Will* v. *Anderson*, 1868, 7 M. 282 ; *Kennedy* v. *Alexander*, 1880, 8 R. 1, 18 S.L.R. 66 ; *Johnston*, 1883, 11 R. 175, 21 S.L.R. 130 ; *Lindsay* v. *Falconer*, 1891, 19 R. 290, 29 S.L.R. 142 ; *Falconer* v. *Macleod*, 1891, 19 R. 291, 29 S.L.R. 143. A person may lodge an alternative claim, and if he establishes either qualification he will be enrolled,—*Wilson* v. *Maltman*, 1873, 1 R. 12.

(*e*) *Hill* v. *Collins*, 1868, 7 M. 283 ; *Wilson* v. *Kerr*, 1878, 6 R. 21 ; *M'Laughlan* v. *Chambers*, 1886, 20 L.R. Ir. 286.

(*f*) Burgh Voters Registration Act, 1856, section 36. The agent or mandatory must have express authority to sign, but a written mandate is not indispensable to prove authority which may be instructed by other proof,—*Rutherford* v. *Lockie*, 1880, 8 R. 6, 18 S.L.R. 71. Want of authority is not validated by subsequent ratification,—*Brydone* v. *Haldane*, 1865, 3 M. 414. The recognised agent of a political party has no general mandate to sign claims,—*Burns* v. *Cassells*, 1891, 19 R. 287, 29 S.L.R. 141.

(*g*) *Hanbridge* v. *Beveridge*, 1889, 26 L.R. Ir. 423.

42. *Objections.*—Any person whose name is in any "list of voters" for any county or division of a county, or for any burgh, as the case may be (*a*), may object to any other person as not entitled to have his name inserted in such list, and in order to this it is necessary that notice of objection be given to the assessor of such county or division of a county, or of such burgh, on or before 21st September (*b*), and otherwise in the same manner as notice of claim (*c*). The form of such notice is in terms of No. 4 of Schedule A. of the Burgh Voters Registration Act of 1856 (*b*), (subject to the necessary alterations in the case of counties), and it must set forth the qualification of the person objected to as appearing in the assessor's list, although some immaterial omission therein will not affect its validity (*d*). Notice must also be given in terms of No. 5 of said Schedule A. (subject to the necessary alterations in the case of counties) on or before 21st September to the person objected to, by such notice being either

given to him or left at his place of abode as described in the assessor's list (*e*). The notice of objection must be signed (*f*) by the objector or his agent or mandatory (*g*), and in every case the objector's *place of abode* must be set forth. Where an objector departs from his objection it is competent to any other voter to insist in it (*h*).

(*a*) A voter in one of a group of burghs has no right to object to a person on the assessor's list in another burgh of the group,—*Grant* v. *Mackenzie*, 1868, 7 M. 290, 6 S.L.R. 30. It does not affect a voter's right to object that he is paid agent of one of the candidates,—*Wilson* v. *Blackwood*, 1868, 7 M. 290.

(*b*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 4 ; see section 41, footnotes (*a*) and (*c*).

(*c*) See section 41, footnote (*b*).

(*d*) *Neilson* v. *Robertson*, 1891, 19 R. 301, 29 S.L.R. 242 ; *Johnstone* v. *Hoole*, 1903, 41 S.L.R. 99.

(*e*) Burgh Voters Registration Act, 1856, section 4. Such notice is sufficiently given if "sent by the post, postage paid, addressed with a sufficient direction, to the person to whom the same ought to be given, at his usual place of abode,"—section 9 of Act. If the notice is sent by post it should be despatched so as to reach the person objected to not later than the last day for lodging claims,—*Neilson* v. *Robertson*, 1891, 19 R. 301, 29 S.L.R. 242. The place of abode to which the notice is to be addressed is that appearing on the assessor's list, even though it be abroad,—*Haldane* v. *Nichol*, 1863, 2 M. 174.

(*f*) Signature by cyclostyle is sufficient,—*Whyte* v. *Watt*, 1893, 21 R. 165, 31 S.L.R. 127.

(*g*) See section 41, footnote (*f*). The mandate may be in general terms,—*Dinnell* v. *M'Master*, 1868, 7 M. 289.

(*h*) *Bruce* v. *Rose*, 1868, 7 M. 291, 6 S.L.R. 34.

43. *Publication, &c.*—The assessor (of the county or division of a county, or of the burgh, as the case may be) makes up three separate lists of the ordinary claims, lodger claims, and objections so intimated to him ; and he publishes these lists on or before 25th September by advertising in one or more local newspapers the place at which copies of said lists and notices of claims and objections will be open for perusal (*a*). At the place so intimated the lists and notices (unless when in use in the Registration Court) must lie open for inspection by any person between 10 A.M. and 4 P.M. of every business day between 25th September and 1st October (*a*) ; and the assessor of a county or division of a county affixes such lists, or the part thereof applicable to each parish, to the door of the parish church (*b*), and the assessor of a burgh affixes his lists at or near the town hall.

The assessor also, on or before 25th September, delivers a copy of the list of voters made up by him, and of the lists of the claims and objections made up by him, to the sheriff-clerk of the county, or town-clerk of the burgh (as the case may be) (*c*), who transmits an abstract of the lists of claims and objections to the Sheriff of the county (*d*), and (on receipt of written intimation from him) gives public notice by advertisement in one or more local newspapers of the dates on which the Registration Courts will be held (*e*). He also gives notice of these dates to the assessor (*e*).

(*a*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), sections 3 and 5; and Reform Act 1868 (31 and 32 Vict. c. 48), section 19 (3 and 4).—See section 44, *infra*.
(*b*) County Voters Registration (Scotland) Act, 1861 (24 and 25 Vict. c. 83), sections 10 and 22.
(*c*) Burgh Voters Registration Act, 1856, section 6.
(*d*) *Ibid.* section 18.
(*e*) *Ibid.* section 19.

44. Any notice directed to be given by advertisement must be repeated in the same or some similar newspaper not earlier than six nor more than eight days after the day on or before which such advertisement is required to be published (*a*); and where any document is directed to be affixed on any place, the same shall continue so affixed for a period including two consecutive Sundays at the least next after the day of publication (*b*). When the day on or before which any act or proceeding requires to be done is a Sunday, the following Monday is substituted therefor (*c*). Deficient publication does not invalidate any list (*d*), nor do errors of public officers affect claims or objections (*e*), neither does vitiation ensue from any misnomer or inaccurate or defective description of any person, place, or thing in any schedule, list, register, or notice, provided that such person, place, or thing be therein described in such a manner as to be commonly understood, and there is no intention to deceive (*f*).

(*a*) Burgh Voters Registration Act, 1856 (19 and 20 Vict. c. 58), section 10.
(*b*) *Ibid.* section 11.
(*c*) *Ibid.* section 35.
(*d*) *Ibid.* section 13.
(*e*) *Ibid.* section 14.
(*f*) *Ibid.* section 46.

III. Registration Court.

45. The Registration Courts for the revisal of the county and burgh lists of voters respectively are held between 25th September and 15th October annually, on such days as are fixed by the Sheriff (*a*), and the Court may be adjourned from time to time, but so that no diet is held after 15th October (*b*). The Court may be held either by the Sheriff or his substitutes.

(*a*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 19.
(*b*) *Ibid.* section 25.

46. There are laid before the Court the assessor's list of voters, the lists of claims and objections, the original notices of such claims and objections, the register of voters then in force, and the valuation roll then in force and that in course of preparation (*a*). The Sheriff's duties are administrative as well as judicial; and in addition to deciding upon claims and objections, he corrects any mistake on the list, and expunges the name of any person who is dead, and also the name of any person in entering whose name and qualification anything requiring to be specified has been omitted, or whose description is insufficient for identification, unless the matter so omitted or insufficiently described be supplied to his satisfaction before the revision of the list is completed (*b*); and if it should appear to him that there has been no wilful purpose to mislead or deceive, or that any misnomer or inaccurate or defective description of any person, place, or thing named or described in any list or notice was not such as to mislead or deceive, he may allow any verbal, clerical, or casual error in such list or notice to be corrected or supplied (*c*). Where the name of a person disqualified in respect of corrupt or illegal practices (*d*) has been erroneously inserted in the assessor's list of voters, the Sheriff (although no objection has been lodged against such person) may expunge his name from the list (*e*).

(*a*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 20.
(*b*) *Ibid.* section 23. See cases quoted in footnote (*c*), *infra*.
(*c*) *Ibid.* section 46; *Smith* v. *Mackay*, 7 M. 287, 6 S.L.R. 29; *Stewart* v. *Bruce*, 1868, 7 M. 287, 6 S.L.R. 43; *Stewart* v. *Moffat*, 1868,

7 M. 320 ; *Wilson* v. *Horne*, 1870, 9 M. 5, 8 S.L.R. 38 ; *Neilson* v. *M'Gowan*, 1876, 4 R. 3, 14 S.L.R. 74 ; *Ferguson* v. *Lang*, 1878, 6 R. 13, 16 S.L.R. 78 ; *Anderson* v. *Mercer*, 1879, 7 R. 28, 17 S.L.R. 166 ; *Murray* v. *Donnan*, 1882, 10 R. 13, 20 S.L.R. 203 ; *Millar* v. *M'Kirdy*, 1884, 12 R. 178, 22 S.L.R. 108 ; *Gray* v. *Craig*, 1892, 20 R. 11, 30 S.L.R. 63 ; *Ross* v. *Carbery and Selanders*, 1897, 25 R. 98, 35 S.L.R. 109 ; but the Sheriff has no power to allow a correction which alters the qualification of the claimant,—*Anderson* v. *Ireland*, 1876, 4 R. 1, 14 S.L.R. 75 ; *Osborne* v. *Melville*, 1899, 2 F. 266. Reference may also be made to the following cases, in which alterations made by the Sheriff were held incompetent by the Appeal Court, but subject to the explanation that these cases were decided under the County Voters Registration Act, 1861, in which there were not such wide powers of correction as in the Act of 1856,—*Clark* v. *Hector*, 1866, 5 M. 66, 3 S.L.R. 63 ; *Watt* v. *Millar*, 1868, 7 M. 285 ; *Campbell* v. *Alexander*, 1868, 7 M. 283 ; *Hilson* v. *Brown*, 1870, 9 M. 26, 8 S.L.R. 37 ; *Veitch* v. *Young*, 1870, 9 M. 28, 8 S.L.R. 20 ; *Livingstone* v. *Oman*, 1877, 5 R. 1, 15 S.L.R. 48 ; *Allan* v. *Smith*, 1879, 7 R. 6, 17 S.L.R. 158 ; *Anderson* v. *Fairgrieve*, 1879, 7 R. 31, 17 S.L.R. 167 ; *Millar* v. *Adamson*, 1884, 12 R. 159, 22 S.L.R. 108.

(*d*) See section 30, *supra*.

(*e*) Corrupt and Illegal Practices Prevention Act, 1883 (46 and 47 Vict. c. 51), section 39 (6). Before expunging the name of such voter the Sheriff must give him notice, and allow him an opportunity of showing cause to the contrary.

47. In the case of double entries, the voter may select the entry to be retained by giving written notice to the sheriff-clerk before the Court, or by an application to the Sheriff in Court (*a*). Failing such selection, the following rules are followed, subject to the proviso that, where the entry to be retained is objected to, the other entry or entries are not deleted unless and until the objection is repelled (*a*):—

In Counties—

1. If one only of the entries is as proprietor, that is retained.
2. If all or none of the entries are as proprietor, and one is the place of the voter's residence, that one is retained.
3. In all other cases the entry first reached is retained.

In Burghs—

1. If one of the entries is the place of the voter's residence that is retained.
2. In all other cases the entry first reached is retained.

The above is to a certain extent qualified by the proviso contained in the saving clause of the Reform Act of 1884 (*b*),

to the effect that "where a man is so registered" (*i.e.*, under an effete qualification saved by section 10) "in respect of the county or borough *occupation* franchise by virtue of a qualification which also qualifies him for the franchise under the Act, he shall be entitled to be registered in respect of such latter franchise only."

(*a*) Registration Amendment (Scotland) Act, 1885 (48 and 49 Vict. c. 16), section 17.
(*b*) 48 and 49 Vict. c. 3, section 10.

48. All contentious matters are dealt with under the formal claims and objections, and any person competent to lodge an objection may oppose a claim (*a*). No written pleadings are allowed, and the Sheriff need not make a note of any statement or plea submitted to him; but he must make a note of the names of the witnesses, and docquet all deeds, &c. produced (*b*). The parties on both sides must be prepared with their evidence, and they may upon an *ex parte* application to the Sheriff obtain warrant to cite witnesses and diligence to recover writings (*c*). The *onus* of proof lies on claimants who are not on the assessor's list, and on objectors to the entries therein (*d*); the Sheriff enrols in said list any claimant who proves to his satisfaction that he (the claimant) "is, and was on the last day of July preceding, entitled to be inserted therein in respect of the qualification described in such notice of claim" (*e*); and on the other hand he expunges the name of every person objected to "whose qualification as stated in any list shall be insufficient in law to entitle such person to vote." (*f*). The Sheriff has no power to award expenses except against a person maintaining any frivolous objection (*g*).

(*a*) Before the hearing of an ordinary claim the person intending to oppose the same must give written notice to the Sheriff of his intention. —Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 22; but this rule does not apply to lodger claims,—*Watson* v. *Watson*, 1902, 5 F. 177.
(*b*) Burgh Voters Registration Act, 1856, section 37.
(*c*) *Ibid.* section 24. The Sheriff is not bound to strike a voter off the list merely because he fails to appear in answer to a citation by an objector,—*M'Gowan* v. *Mather*, 1879, 7 R. 46, 17 S.L.R. 174; *Connolly* v. *Kyle*, 1903, 41 S.L.R. 102; but where after a second citation a claimant fails to appear at an adjourned diet, the Sheriff is entitled to strike him off the list,—*Weir* v. *Blackwood*, 1869, 8 M. 3, 7 S.L.R. 22; *Stirling*

v. *Fletcher*, 1895, 23 R. 120, 33 S.L.R. 122 ; *Andrews* v. *Armstrong*, 1897, 25 R. 95, 35 S.L.R. 108. An objector need not appear personally, but may be represented by an agent or mandatory,—*Watson* v. *Livingstone*, 1902, 5 F. 171.

(*d*) *Walls* v. *Spence*, 1868, 7 M. 288, 6 S.L.R. 33 ; *Hilson* v. *Scott*, 1870, 9 M. 4, 8 S.L.R. 28 ; *Brown* v. *Paterson*, 1876, 4 R. 5, 14 S.L.R. 76 ; *Crawford* v. *Johnston*, 1879, 7 R. 3, 17 S.L.R. 164 ; *Adamson* v. *Smith*, 1879, 17 S.L.R. 158 ; *Stevenson* v. *Sutherland*, 6th Dec. 1898, 6 S.L.T. No. 302.

(*e*) Burgh Voters Registration Act, 1856, section 21. Attention is directed to the above-quoted reference in this section to "the last day of July preceding," which is in accordance with the terms of section 3 of the Act, and it may be questioned whether a "true owner," who has been omitted from the assessor's list can establish his right by claim unless he is in possession of the qualifying subjects on 31st July preceding the Registration Court.—See section 7, footnote (*e*).

(*f*) Burgh Voters Registration Act, 1856, section 23.

(*g*) *Ibid.* section 39.

49. A voter must as a general rule vote at the polling place applicable to the polling district in which he is registered, but *county* voters may apply in the Registration Court for transfer from the polling district in which their qualification is situated to the polling district where they reside if their residence is within the county, or to any other polling district if their residence is outwith the county (*a*). A police constable on duty is entitled to vote at any polling station (*b*).

(*a*) County Voters Registration (Scotland) Act, 1861 (24 and 25 Vict. c. 83), section 43.

(*b*) The Police Disabilities Removal Act, 1887 (50 Vict. c. 9), section 2. In order to the exercise of this privilege he must seven days before the election apply for and obtain from the chief constable a certificate stating his name, his number in the police force, his number and description on the register of voters, and the fact that he is sent or employed in the discharge of his duty so as to prevent him voting at the polling station at which he would otherwise be entitled to vote. A "constable" includes "any person belonging to the police force," and the "chief constable" includes "an assistant chief constable, a commissioner or assistant commissioner of police, a head constable, and any other person for the time being in command of a police force, or acting in that capacity."

IV. The Completed Registers.

50. The alterations made upon the assessor's list of voters are authenticated by the Sheriff writing his initials against these in open Court (*a*), and as thus adjusted the lists are handed to the sheriff-clerk of the county and town-clerk of

the burgh, as the case may be, who prefixes to the voters' names therein numbers which are consecutive throughout, and who causes the same to be printed in book form in the same order and divisions as the assessor's lists (*b*). When thus completed these form the registers of parliamentary voters for the county or burgh, or division of a county or burgh, to which they respectively apply, and are conclusive evidence of the qualification of the voters therein named (*c*). Such registers must be completed by the 31st day of October in the year in which they are made up, and they remain in force from that date until the 1st day of November of the following year (*d*). The corrupt and illegal practices list is authenticated in the same manner, and is appended to the register of voters (*e*). The Sheriff's judgment is final on matters of fact, but is subject to revision on points of law by the Court of Appeal (*f*); the printing of the registers is proceeded with irrespective of such appeals, and any alteration or correction rendered necessary by the decision on appeal is made by or at the sight of the Sheriff "as soon as may be *after* the 31st of October in each year" (*g*). Further, any "merely clerical error" in any register may be competently corrected *at any time* by the Sheriff on its being proved to him to exist, and is made by the Sheriff writing such correction in the register and signing his name and the date of such correction against the same (*h*).

(*a*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 23.

(*b*) *Ibid.* Sections 26 and 29. See sections 37, 38, and 39, *supra.* A separate register is made up for each division of a *county.*—Reform Act 1868 (31 and 32 Vict. c. 48), sections 11 and 42; Registration Amendment (Scotland) Act (48 and 49 Vict. c. 16), section 10. The divisions of a *burgh* are, however, all embraced in one register, but the voters in each division are numbered in a separate series.—Redistribution of Seats Act, 1885 (48 and 49 Vict. c. 23), section 13 (3). In combined counties and districts of burghs a separate register is made up in each county or burgh.

(*c*) Burgh Voters Registration Act, 1856, section 44.

(*d*) *Ibid.* sections 30 and 32.

(*e*) Corrupt Practices Prevention Act, 1883 (46 and 47 Vict. c. 51), section 39 (5 and 8). See section 39, footnote 6.

(*f*) See sections 57 to 60, *infra.* The sheriff's decision upon disqualifications from exemption from poor-rates or from corrupt or illegal practices are also appealable.—Reform Act 1868, section 17; Corrupt Practices Act, 1883, section 39.

(*g*) Reform Act, 1868 (31 and 32 Vict. c. 48), section 22.

(*h*) Burgh Voters Registration Act, 1856, section 30.

Chapter II

MUNICIPAL AND LOCAL GOVERNMENT REGISTERS

I. Municipal Register.

51. This register consists as follows, viz.:—

I. In the case of Burghs returning or contributing to return a Member to Parliament:—

(*A.*) The burgh parliamentary register (*a*), subject to the distinctive marks therein (*b*).

(*B.*) The supplementary list, which contains the names of the persons mentioned in subdivisions B, C, and D of Division I. of section 32 hereof. This list is made up by the assessor of the burgh (*c*), and there is a distinctive mark placed against the names of the voters therein who are disqualified for municipal purposes by the exemption from or non-payment of any burgh rate (*d*). Where the municipal boundary extends beyond the police boundary there is a distinctive mark placed against the names of voters qualified in respect of subjects situated in the area lying between these two boundaries, as indicating that they are not qualified in virtue of this enrolment for parish council purposes (*e*). This list also contains the names of those persons who being already registered either in the parliamentary register for parliamentary and municipal purposes or in this list for municipal purposes, are entitled to be registered in an additional parish or parishes for parish council purposes, but against whose names a distinctive mark is put as indicating that these subsidiary emoluments are for parish council purposes only (*f*).

II. In the case of other Burghs:—

(*A.*) An excerpt from the county parliamentary register containing the names of all persons appearing thereon in respect of premises within the municipal boundary, which is prepared by the assessor of the county or counties, or districts thereof, within which the burgh is situated (*g*), and in which excerpt the assessor places a distinctive mark against the names of any voters therein who are exempted from or have failed to make payment of any burgh rate as indicating that they are disqualified for municipal purposes (*h*).

(*B.*) The supplementary list, which contains the names of the persons mentioned in subdivisions B and C of Division II. of section 32 hereof, and which in other respects is similar to the supplementary list above mentioned (*i*).

In both instances the supplementary list is arranged in the same order and subdivisions, and is generally similar to the parliamentary register (*j*).

(*a*) Town Councils (Scotland) Act, 1900 (63 and 64 Vict. c. 49), sections 24 and 25.
(*b*) See section 38, footnotes (*b*) and (*c*).
(*c*) Town Councils Act, 1900, section 27.
(*d*) *Ibid.* section 28.—See section 36, *supra.*
(*e*) *Ibid.* section 31 ; and Local Government (Scotland) Act, 1894 (57 and 58 Vict. c. 58), section 12 (3) and (8). The names of the voters so marked are not included in the copy of the register furnished by the town-clerk to the clerk of parish council, and these voters are only qualified for parish council purposes if included in the county council register.
(*f*) Local Government Act, 1894, section 12 (4) and (5).—See section 34 (*c*).
(*g*) Town Councils Act, 1900, section 26.
(*h*) *Ibid.* section 28.
(*i*) See footnotes (*c*), (*d*), and (*e*), *supra.*
(*j*) See sections 38, 39, and 50, *supra.*

II. County Council Register.

52. This register is made up every third year (of which triennial periods 1904 is one), and it consists as follows, viz.:—

(*A.*) The county parliamentary register, or a combina-

tion of the parliamentary registers for each division of a county (where the county is divided for parliamentary purposes) (*a*), subject in each case to the distinctive marks on said register or registers (*b*).

(*B.*) The supplementary register, which is made up by the assessor of the county or of each division of the county (as the case may be), and which contains the names of the persons mentioned in subdivisions B and C of section 33 hereof (*c*). This register also contains the names of those persons who, being already registered in the parliamentary register for parliamentary and county council purposes or in the supplementary register for county council purposes, are entitled to be registered in an additional parish or parishes for parish council purposes, but against whose names a distinctive mark is put as indicating that these subsidiary enrolments are for parish council purposes only (*d*). The supplementary register is arranged in the same subdivisions, and is generally similar to to the parliamentary register (*e*).

(*C.*) Where detached areas of another parliamentary county are attached to a county for county council purposes, copies of the necessary parts of the county council register of the parliamentary county in which registration takes place, and which copies are transmitted by the county clerk of the registering county to the county clerk of the county to which such areas are attached (*f*).

(*a*) Local Government (Scotland) Act, 1889 (52 and 53 Vict. c. 50), section 28 (1) and (6). A voter may be enrolled in more than one division of a county for parliamentary purposes, but is only entitled to give one vote for county council purposes.—Section 32 of Act.

(*b*) See section 37, footnotes (*h*) and (*i*).

(*c*) Local Government Act, 1889, sections 28 (2) and (6). Exemption from or non-payment of any consolidated rate prevents a voter being registered in the supplementary register.—See section 36, *supra*.

(*d*) Local Government (Scotland) Act, 1894 (57 and 58 Vict. c. 58), section 12 (4) and (5).—See section 34 (*c*).

(*e*) See sections 37, 39, and 50, *supra*.

(*f*) Local Government Act, 1889, sections 28 (4) and 44 (*c*).

III. Parish Council Register.

53. This register consists as follows, viz. :—

(*A.*) The county council register, exclusive of such portions thereof as relate to police burghs, and subject to the distinctive marks in said register (*a*); and

(*B.*) The municipal register, subject to the distinctive marks therein (*b*).

So much of said (combined) register as relates to each parish is the parish council register of that parish, and a certified copy of that part of the register is furnished by the county clerk or town clerk, as the case may be, to the clerks of the several parish councils of parishes wholly or partly within the county or burgh or police burgh (*c*).

(*a*) See sections 37 and 52, *supra.*

(*b*) See sections 38 and 51, *supra.*

(*c*) Local Government (Scotland) Act, 1894 (57 and 58 Vict. c. 58), section 12 (8). A voter is entitled to give only one vote for each of any number of candidates not exceeding the number to be elected at a parish council election, section 10 (2) of Act.

IV. School Board Register.

54. Under the Education Acts, 1872 to 1883, the register of voters is the latest valuation roll applicable to the parish or burgh for which the Board is to be elected, made up and completed not less than one month prior to the election (*a*), or a certified copy of such roll (*b*). The procedure under which the parliamentary register is made up and revised has no application to the School Board register.

(*a*) Education (Scotland) Act, 1872 (35 and 36 Vict. c. 62), Schedule B, section 2.—See section 35, footnote (*b*), as to right to cumulative vote.

(*b*) Education Act, 1872, schedule B, section 2 ; General Order of Scotch Education Department, dated 2nd October 1893 ; and Circular No. 90, of same date. Where on account of the large number of the electorate it is found necessary to have the valuation roll copied and arranged in the alphabetical order of names, the returning officer may, on obtaining the sanction of the department, make such copy and charge the cost thereof as part of the election expenses. The returning officer is the chairman of the retiring School Board, or failing him, some person appointed by the Board. This copy of the valuation roll is deposited by the returning officer for not less than six clear days before the day of election in some convenient place or places, of which due notice is given, and to which any ratepayer may have reasonable

access for the purposes of inspection, and an elector whose name is erroneously omitted therefrom is entitled to make representations to the returning officer on the subject.

V. Procedure.

55. The registration procedure under which the parliamentary registers are made up also applies to the municipal and Local Government registers, other than the school board register (*a*). Accordingly the municipal "supplementary list" (*b*), and (in the case of burghs not returning or contributing to return a Member to Parliament) the "excerpt" (*b*) from the county parliamentary register, are made up by the assessors responsible therefor (*b*), in the same order of names and with the same divisions and subdivisions as the lists of voters for parliamentary purposes (*c*), and are published along with and in the same manner as these lists (*d*); and on the occurrence of each triennial period (of which 1904 is one) the county council "supplementary register" (*e*) is made up and published in the same way (*f*). In publishing the parliamentary lists the assessor must also give notice of the effect of all distinctive marks placed by him thereon for municipal, county council, and parish council purposes (*g*). Any omission of a voter's name from or its erroneous insertion in the "supplementary list," "excerpt," or "supplementary register" above referred to (which may be designated as the "subsidiary lists") can be rectified by claims and objections in ordinary form (*a*); and the same procedure applies to the rectification (1) of an erroneous insertion or omission to insert the "distinctive marks" above alluded to in either the parliamentary or subsidiary lists (*h*); (2) of a disqualification arising from the erroneous or improper exemption from payment of any burgh rate, or the county consolidated rate (*i*); and (3) of an erroneous omission from or insertion in the subsidiary lists of any voter's name in respect of corrupt or illegal practices (*j*). Notice of claim or of objection must be given to the assessor and (in the latter case) to the person objected to, and the assessor must publish lists of such claims and objections, all in a similar manner to the procedure followed in connection with the parliamentary franchise (*k*); and the title of an objector is his being on

the list of voters applicable to the franchise in connection with which the objection is lodged (*l*).

(*a*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58); Town Councils (Scotland) Act, 1900 (63 and 64 Vict. c. 49), section 29; Local Government (Scotland) Act, 1889 (52 and 53 Vict. c. 50), section 28 (1 *d*).
(*b*) See section 51, *supra*.
(*c*) See sections 37, 38, and 39, *supra*.
(*d*) See sections 39 and 44, *supra*.
(*e*) See section 52, *supra*.
(*f*) See sections 37 and 39, *supra*.
(*g*) Local Government Act, 1889, section 28 (1 *d*).
(*h*) Town-Councils Act, 1900, section 29; Local Government Act, 1889, section 28 (1 *e*); Local Government (Scotland) Act, 1894 (57 and 58 Vict. c. 58), section 12 (6). See sections 37, 38, 51, and 52, *supra*.
(*i*) Town Councils Act, 1900, section 28; Local Government Act, 1889, section 28 (1 *b*) and (2 *l*).
(*j*) Elections (Scotland) Corrupt and Illegal Practices Act, 1890 (53 and 54 Vict. c. 55), section 29. See sections 30 and 36, *supra*.
(*k*) See sections 41 to 44, *supra*.
(*l*) See section 42, *supra*.

56. The Sheriff in his Registration Court revises the subsidiary lists in the same manner as the parliamentary lists (*a*), and, after adjustment and authentication, they are delivered to the Town-Clerk (so far as they relate to the municipal franchise), and to the Sheriff-Clerk (so far as they relate to the county council franchise), and are numbered and printed off before the 31st day of October of the year in which they are made up, in the same manner as the parliamentary registers (*b*). The Sheriff's decision is final on matters of fact, but is subject to revision by the Court of Appeal on questions of law, and this remark applies not only to the municipal "supplementary list" and "excerpt," and the county council "supplementary register," including the distinctive marks on these several lists, but also to the distinctive marks on the parliamentary registers for municipal and local government purposes (*c*); and any alteration rendered necessary by a decision on appeal, as well as the correction of any "merely clerical error," is made in the same manner as in the case of the parliamentary registers (*d*).

(*a*) See sections 45 to 48, *supra*. Where the name of a person disqualified in respect of corrupt or illegal practices (see section 36, *supra*) is erroneously inserted in one of the subsidiary lists, the Sheriff (although no objection has been lodged) may expunge his name from the list, but the Sheriff must give notice to such person of his intention

to do this, and give him an opportunity to make a statement showing cause to the contrary ; the Sheriff only determines the question of disqualification, and not whether the person is guilty of a corrupt or illegal practice.—The Elections (Scotland) Corrupt and Illegal Practices Act, 1890 (53 and 54 Vict. c. 55), section 29 (5) and (6).

(*b*) See section 50, *supra*. There is no corrupt and illegal practices list made up with reference to the subsidiary registers. The provisions with regard to change of polling place in the case of a *county* voter, and as to police constables on duty recording their vote at any polling station, are applicable to the subsidiary registers.—Section 49, *supra*, and Police Disabilities Removal Act, 1893 (56 Vict. c. 6), section 2.

(*c*) Reform Act 1868 (31 and 32 Vict. c. 48), section 22 ; Town Councils Act, 1900 (63 and 64 Vict. c. 49), section 29 (by the terms of which the decision in *Wood and Others* v. *Laing*, 1897, 24 R. 382, 34 S.L.R. 330, is rendered inoperative) ; Local Government (Scotland) Act, 1889 (52 and 53 Vict. c. 50), section 28 ; Local Government (Scotland) Act, 1894 (57 and 58 Vict. c. 58), section 12 (6). The Sheriff's decision upon disqualifications in respect of corrupt or illegal practices is also appealable.—Elections (Scotland) Corrupt and Illegal Practices Act, 1890 (53 and 54 Vict. c. 55), section 29.

(*d*) See section 50, *supra*.

Chapter III.

APPEAL COURT.

57. The Registration Appeal Court consists of three Judges of the Court of Session, named by Act of Sederunt, one from each Division of the Inner House, and one from the Lords Ordinary in the Outer House (*a*). Registration appeals are heard on Mondays, but may be adjourned to other days, and the Court may sit either during session or in vacation or recess (*b*).

(*a*) Reform Act 1868 (31 and 32 Vict. c. 48), section 23.
(*b*) Court of Session Act, 1868 (31 and 32 Vict. c. 100), section 10.

58. The procedure in appeal is for the party dissatisfied with the Sheriff's decision to demand in open Court a special case (*a*); this demand may be made either by the party himself or by some one on his behalf, and in response thereto the Sheriff must prepare, sign, and date such special case, and deliver the same also in open Court (*b*) to the sheriff-clerk of the county or town-clerk of the burgh, as the case may be. Whereupon the appellant declares his intention to appeal, and he must within ten days lay a certified copy of the case before the Appeal Court. Appeals by both objector and claimant may be embodied in one special case (*c*); and where the qualifications of several claimant appellants depend upon the same question of law the Sheriff may state one special case, and append thereto the names of the other claimants, and the decision of the Court of Appeal upon such case applies to all the persons so named (*d*).

(*a*) Reform Act 1868 (31 and 32 Vict. c. 48), section 22.
(*b*) The case should be so delivered before 15th October, which is the last date to which the Sheriff's Registration Court can be adjourned.—See section 45, *supra;* but where through no fault of the appellant the case was not signed and delivered until after that date, an objection that the appeal was not timeously made was repelled.—*Brown* v. *M'Culloch*, 1878, 6 R. 24.
(*c*) *Haldane* v. *Nicol*, 1863, 2 M. 174.

(*d*) This procedure is limited to appeals arising out of claims to be enrolled, and does not apply to those arising out of objections to persons already on the roll.—*M'Gowan* v. *Mather*, 1879, 7 R. 46, 17 S.L.R. 174; *Neilson* v. *Robertson*, 1891, 19 R. 301, 29 S.L.R. 242.

59. The Sheriff ought in the special case to state the names and designations of the parties to the controversy and the precise position of the party who is claiming to be enrolled or who is objected to (*a*); his conclusions (*b*) in fact upon the evidence both oral and documentary (*c*), and the precise legal question involved (*d*). It is the duty of the appellant to see that a proper statement of the case be brought before the Court (*e*), but if it be defective in form it may be remitted back to the Sheriff for amendment (*f*).

(*a*) *Miller* v. *Wilson*, 1868, 1 M. 320 (per Lord Ormidale).

(*b*) It is the Sheriff's conclusions upon the evidence, and not his notes of the evidence given, that should appear in the special case, followed by a distinct statement of the point of law to be decided.—*Jardine* v. *M'Culloch*, 1865, 4 M. 138, 1 S.L.R. 50; *Hilson* v. *Otto*, 1870, 9 M. 18, 8 S.L.R. 35; *Anderson* v. *Ireland*, 1876, 4 R. 1, 14 S.L.R. 75.

(*c*) Documents alluded to but not embodied in the special case are allowed to be looked at.—*Bell* v. *Donaldson*, 1879, 7 R. 34, 17 S.L.R. 171.

(*d*) See footnote (*b*), *supra*, and cases quoted,—*Pringle* v. *Hilson*, 1865, 3 M. 420; *Cameron* v. *Hilton*, 1866, 5 M. 73, 3 S.L.R. 69 (in which a special case which did not state the question of law was dismissed, but it would now seem to be competent to remit such a case to the Sheriff for amendment); *Miller* v. *Fisher*, 1863, 2 M. 192 (what is nominal or fictitious is a question of law).

(*e*) *Maitland* v. *M'Credie*, 1868, 7 M. 288; *Adamson* v. *Smith*, 1879, 17 S.L.R. 158.

(*f*) Reform Act 1868 (31 and 32 Vict. c. 48), section 22. An objection to a defective case may be waived.—*Hilson* v. *Otto*, quoted footnote (*b*), *supra*.

60. The Appeal Court are directed to hear parties and give their decision with all convenient speed, and to specify exactly every alteration or correction, if any, to be made upon the register of voters, in pursuance of such decision (*a*). The decision of the Appeal Court is limited to the question of law raised by the special case (*b*), and where the name of a voter has been inserted in or expunged from the roll by a former Court of Appeal, there must be a change of circumstances before there can be a fresh appeal (*c*). The Sheriff's judgment may be recalled of consent (*d*); and the Court may allow any verbal, clerical, or casual error in any list, register, or notice to be supplied (*e*). Even where no appearance is

made for the respondent, the appellant must show cause why the Sheriff's judgment should be altered (*f*). The decision of the Appeal Court is final, and not subject to review by any Court or in any manner whatsoever, and they have power to award expenses (*a*); their decision is noted on the certified copy of the special case, and a certified copy of their interlocutor is transmitted by the Clerk of the Appeal Court to the Sheriff, in order that the register to which it refers "shall be, as soon as may be after the thirty-first day of October in each year, altered accordingly by or at the sight of the Sheriff" (*a*).

(*a*) Reform Act 1868 (31 and 32 Vict. c. 48), section 22.
(*b*) *Maitland* v. *M'Credie*, 1868, 7 M. 288.
(*c*) *Renton* v. *Robin*, 1863, 2 M. 189; *Murray* v. *M'Gowan*, 1869, 8 M. 4, 7 S.L.R. 78; but a different objector would seem entitled to re-state an objection which has formerly been repelled,—*Miller* v. *Fisher*, 1863, 2 M. 192.
(*d*) *M'Chlery* v. *Cowan*, 1866, 5 M. 73, 3 S.L.R. 75.
(*e*) Burgh Voters Registration (Scotland) Act, 1856 (19 and 20 Vict. c. 58), section 46. See section 46, *supra*.
(*f*) *Aitken* v. *Robertson*, 1880, 8 R. 12, 18 S.L.R. 68.

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